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**THE
LAW OF LAND ACQUISITION, AND
COMPENSATION**

THE
LAW OF LAND ACQUISITION
AND
COMPENSATION

BEING
THE LAND ACQUISITION ACTS
I OF 1894 AND XVIII OF 1885 AS AMENDED BY ACTS
IV AND X OF 1914

AND
COGNATE MEASURES

WITH
A CONCISE COMMENTARY

BY
WALTER RUSSELL DONOGH, M.A.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW,
AND AN ADVOCATE OF THE HIGH COURT AT CALCUTTA.
AUTHOR OF 'THE INDIAN STAMP LAW,' AND 'THE HISTORY AND LAW OF SINDH'

CUJUS EST SOLUM EJUS EST ALTUM

SECOND EDITION

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To

THE RIGHT HONOURABLE

VISCOUNT HALDANE OF CLOAN, K.T.,

P.C., M.A., LL.D., D.C.L., F.R.S.,

Lord High Chancellor of Great Britain,

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Some further alterations have been made in the cognate measures, *e.g.*, the Indian Telegraph Act, which have not been overlooked. In fact the book is now in all respects up to date.

CALCUTTA,
February, 1916.

W. R. D.

P R E F A C E .

The unusual activity which has been awakened throughout the country in the acquisition of land for public purposes has induced the author to compile a treatise dealing with the law on the subject. In preparing the present work he has had in view the fact that the principles which the Legislature have enacted for India are admittedly borrowed from the English law. It follows that when the same principles have been discussed and elucidated by the highest judicial authority in England, such decisions must necessarily be of the utmost value in construing the Indian Acts. The author has designed his commentaries to meet these considerations. But on the other hand in resorting to English case-law, a careful selection of cases has been made, with a view to their affording assistance and not embarrassment. For the collection of English authorities and the elucidation of the principles of compensation the author is indebted, mainly, to the valuable and exhaustive works of Dr. Sylvain Mayer, and Sir C. A. Cripps, K.C., on the subject, and to the article on 'Compulsory Purchase of Land and Compensation' contained in Lord Halsbury's 'Laws of England,' which is attributed to the pen of Lord Alverstone, C.J. At the same time no decision of any bearing, of any High Court in India, down to the most recent case, has been omitted.

A special feature of the work is the inclusion, in Part II, of the Act of 1894 as modified by the Calcutta and Bombay Improvement Acts. The book is thus specially adapted for the use of those who may have

interests falling within the jurisdiction of the Tribunals appointed for those cities. For this idea, and the elaboration of it, the author is indebted to Mr. F. G. Wigley, C.I.E., Barrister-at-law, Secretary to the Bengal Legislative Council. For greater convenience the references to the modified Act in the Index are distinguished by brackets. At the same time the modifications themselves appear in italics, so that the text can be used as well for general purposes.

The Appendices moreover contain extracts of the essential portions of the Improvement Acts, as well as such cognate measures as relate to Canals, Drainage, Telegraphs, Tramways, Railways, Electricity and Works of Defence. The proceedings in Council relating to both the Land Acquisition Acts, Rules which have the force of law, and a collection of 'forms' of notices and notifications in general use, are added. In short, nothing has been omitted which could add to the utility of the book without seriously encumbering it.

W. R. D.

CALCUTTA,
May, 1913.

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PART I.

INTRODUCTION.

THE history of the acquisition of land in India for public purposes may be said to commence with Regulation I of 1824 of the Bengal Code. That measure, which was declared to operate "throughout the whole of the provinces immediately subject to the presidency of Fort William," had a two-fold object. It was intended, primarily, to provide rules "for enabling the officers of Government to obtain at a fair valuation land or other immoveable property required for roads, canals, or other public purposes." These are comprised in the first seven sections of the Regulation, while the remaining sections contain the rules for regulating the temporary occupation and use of land for the manufacture of salt, a monopoly for which had been established by the Government, principally in the provinces of Bengal, Orissa and Cuttack, since the year 1780.

The provisions laid down for the acquisition of land are short and simple. "Whereas," the preamble states, "the rights and interests of individuals in their respective landed estates and other property have been secured to them by the existing laws and regulations, and by the courts of justice established for their administration; and whereas it being necessary occasionally to require the surrender of the property of individuals for purposes of general convenience to the community, it appears expedient distinctly to define the course of proceeding to be followed in such cases, in order that works and arrangements of public utility may not be unduly impeded, and that, at the same time, a just and full compensation may be secured to all persons holding an interest in property so appropriated, the following rules have been

enacted." These may be briefly summarised as follows :— Whenever it appeared expedient to acquire any land for any public purpose, if there were "any hindrance to the purchase of the said property by private bargain," a duly empowered officer might proceed to the spot and erect thereon a flag, and after demarcating the land which was required, order a proclamation by beat of drum, calling upon all persons interested therein to appear and state their claims and the terms on which they were willing to dispose of their interests, or their objections to sell, as the case might be. The matter was then submitted to the Governor-General in Council, together with a report of the estimated value of the premises. If the claimants objected to sell, or demanded "exorbitant consideration," it was open to the Governor-General in Council, or any Board or Committee to whom he might be pleased to delegate his powers, to submit the questions at issue to arbitration. An equal number of arbitrators, but not more than two on each side, were then appointed, with power to elect an umpire in case of a difference of opinion. The inquiry was held "under the general superintendence of the judge, magistrate, or collector" of the district wherein the property was situated, and to him, at the close of the inquiry, "a full and specific report and award" was delivered. This officer in turn submitted the whole case with his report to the Governor-General in Council, with whom the final directions as to acquisition rested.

These provisions were specially extended to the town of Calcutta by Act I of 1850, a measure enacted "for confirming the title to lands in Calcutta taken for public purposes." "The powers and provisions," it enacts, "of the first seven sections of Regulation I, 1824, of the Bengal Code, shall be applicable to all lands within the town of Calcutta which shall have been declared by the Governor of Bengal to be needed for any public purpose: and such declaration shall be conclusive evidence that the purpose for which the lands are needed is a public purpose."

In the year 1839 the first measure of this character affecting the town of Bombay was introduced. This was the Building Act (XXVIII of 1839), which provided in sections

15 to 21 for the acquisition of "any ground within the Islands of Bombay or Colaba, for the purpose of widening or altering any existing public road, street, or other thoroughfare, or drain, or for making any new public road, street or other thoroughfare, or drain."

If the acquisition affected private interests an estimate was to be made of the value of the property in question by "the Surveyor to the Court of Petty Sessions" and "the amount of such estimate if duly sanctioned by the Governor in Council" paid to the owner. If the owner refused the compensation tendered, the Court of Petty Sessions was empowered to have the value determined "by a Jury of twelve indifferent men, resident on the Island," and the valuation so made was "final and conclusive to all intents and purposes against all persons." In the event of conflicting claims being set up to the property in question, the compensation was to be paid "into the hands of the Accountant-General of the Supreme Court of Bombay, for the use and benefit of such persons as should appear entitled thereto by any decree or judgment of the said Supreme Court."

In the year 1850, these provisions were extended by Act XVII of that year so as to include the acquisition of land, within the same limits, which was required for railways and other works of public utility.

In the same year the provisions of Regulation I of 1824 of the Bengal Code were in like manner extended to meet the requirements of railway construction and other public works in Bengal. This was effected by Act XLII of 1850, the provisions of which though at first limited to Bengal, were subsequently extended to the Madras Presidency by Act XX of 1852, sec. 20.

This was an Act "to facilitate the acquisition of land needed for public purposes in the Presidency of Fort St. George," and was the first measure of the kind introduced for the province of Madras. Its provisions are merely a modification of the first seven sections of Regulation I of 1824, already referred to. A declaration by the Governor in Council, in a minute of Council, that any land was needed for a public purpose was conclusive evidence that the

purpose for which the land was needed was a public one. Land so required might be acquired by the Collector by purchase, or under an order to take possession by the Governor in Council. The effect of such an order was to vest the property in question absolutely in the Government, free of all incumbrances. The consideration was then determined by the Collector's award, or in case of dispute by arbitration, in the manner described. The award of the arbitrators as to the amount of compensation to be given was conclusive, and could not be challenged except on the ground of corruption.

This was the last of the local measures relating to land acquisition.

The next enactment, which was declared to operate throughout the whole of British India and which repealed all the existing laws above mentioned, was Act VI of 1857.

The Act of 1857 was a much more exhaustive and elaborate measure. It consisted of thirty-nine sections and comprised not only the substance of the various provisions which it repealed, but a much more complete and detailed set of rules for the guidance of those to be entrusted with the working of the law.

A few modifications were also introduced. A 'declaration' might henceforth be issued by a Secretary to a local Government. A plan of the land in question was also required to be made, and a written notice of the proposed acquisition affixed on the spot. If the persons interested agreed as to the amount of compensation the Collector might make his award accordingly, and also apportion the same. If they were unable to agree the question was, as before, to be referred to arbitration.

As soon as a Collector had made an award or directed a reference he could take possession, and the land thenceforth was "vested absolutely in the Government, free from all other estates, rights, titles, and interests." In the event of a reference, the arbitrators were empowered to decide not only the amount of the compensation to be given but also the manner of its apportionment, and the question of costs. An award so made was conclusive, and could not be impeached.

except on the ground of "corruption or misconduct of the arbitrators."

This Act provided for temporary as well as permanent occupation, and applied to all public works, including "roads, canals and railways."

In the year 1861 it was found necessary to amend the Act on two points. Act II of 1861 provided for the case of an acquisition of land needed for the construction of "any Road, Canal, or Railway," and authority was given for the temporary occupation of adjacent land not more than one hundred yards, and in certain cases not more than two miles, from the "centre line" of the same, for the purpose of taking earth or other materials for making or repairing the same, or for depositing earth etc. thereon, or for erecting temporary buildings and workshops, or for the construction of temporary roads or railways. The full value of all 'clay, stone, gravel, sand and other materials taken therefrom was to be given as agreed upon, or, in the event of any dispute, by an award, as in the case of a permanent acquisition.

The other amendment provided for the enforcement of the surrender of land in presidency towns, in case of resistance, by the Commissioner of Police.

The Bill as originally drawn in 1857 had contained a section providing also for the acquisition of land by the local Governments for the construction of works of public utility by private enterprise, in the same manner as other lands required by the Government itself. The Law Member Mr. (Sir Barnes) Peacock, however, thought that "when a private individual wished to undertake a work of public utility at his own expense, he ought not to be put in possession of the land which he required for that work except under a private Bill." In deference to this opinion the clause in question was struck out. Six years later, however it was found necessary to resort to special legislation, for this purpose.

Act XXII of 1863 was an "Act to provide for taking land for works of public utility by private persons or com

panies, and for regulating the construction and use of works on land so taken."

A work of public utility was defined to mean "any bridge, road, railroad, tramroad, canal for irrigation or navigation, work for the improvement of a river or harbour, dock, quay, jetty, drainage work, or electric telegraph, and also all works subsidiary to any such work;" and the operation of the Act was limited specifically to these purposes. It was open to the Governor-General in Council, however, to extend the scope of the Act by notification so as to include other works.

The main provisions of the Act are contained in eight sections (ss. 26-33), which provide that land required for the purposes of that Act might be acquired in the same manner as land acquired under Act VI of 1857 at the public cost. The remaining forty-five sections comprise the rules of procedure incidental to the acquisition, and supplementary to the execution of the works projected. The Act was in force for seven years, though hardly ever resorted to, and was ultimately condensed and incorporated with the general law as Part VII of Act X of 1870, inasmuch as circumstances no longer appeared to justify its separate existence.

The circumstances which led to the repeal of Act VI of 1857 and the enactment of Act X of 1870, a measure more closely approximating to the "principles recognised by the law of England," are fully discussed in the speeches in Council which preceded its introduction on the Statute-book.

The experience of twelve years' working of the existing law had disclosed a deplorable state of things, for which the deficiencies of the Act were clearly responsible. The wholly unfettered system of assessment of compensation by irresponsible arbitrators, which was the main feature of this measure, and had given rise to the grossest abuses, and to a scandalous waste of public money.

On the 19th March 1869, the Hon'ble Mr. (Sir John) Sturtevant introduced a Bill to consolidate, and amend the law for the acquisition of land needed for works of public utility. The reasons for which an amendment of the law was

necessary," he said, " might be summed up in a few words. They were, that the existing system by which the value of the land required for public purposes was determined by three arbitrators, whose award was absolutely final—for there was practically no appeal under any circumstances—had been found to lead to consequences which were altogether preposterous, and which often involved a waste of public money which was really scandalous."

As an illustration of what had actually occurred he gave the following instance:—" A piece of land required for a public purpose, which the owner himself had distinctly declared was almost valueless, and which the Collector had valued at Rs. 75, was declared by the arbitrators to be worth Rs. 47,400. For the loss of leases for which the owner had asked Rs. 7,000 the arbitrators awarded him Rs. 71,200. The arbitrators refused to give any reason for the award they had made, and the Government was obliged to pay the sum awarded. Really no language could be too strong for the occasion, and he thought he might say that no one could defend the existing law or deny the necessity of its amendment."

" The principles borne in mind," he went on to add, " in framing the proposed Bill, were that, while every possible protection ought to be given to private rights of property, and while there ought to be no room even for suspicion that the Government could exercise any arbitrary power which would enable it to infringe the just rights of individuals, at the same time an independent and impartial tribunal ought to be constituted for the settlement of all disputed questions as to the value of property required to be taken for public purposes. The Bill proposed to entrust to selected judicial officers the duty of determining all questions which arose between the owner and the Government."

The Bill further provided that such judicial officers should have the assistance of two assessors—one to be nominated by the Collector and the other by the persons interested—to help them in determining the amount of the compensation. But the assessors could merely deliver opinions, whereas the award was to be made by the Judge. If one or both of them

were of the same opinion as the Judge his decision would be final, otherwise not. An appeal, in the event of a difference of opinion, would lie to the High Court, in most cases.

These changes in the constitution of the tribunals, however, only provided a remedy for part of the evil. "When the Government," he said on a later occasion, "came to the conclusion that it was necessary to amend the law, it considered that the main evils of which complaint had been made arose from the fact that the existing law contained nothing whatever to show the principles on which the valuation of land taken up for public purposes ought to be regulated. In determining what these principles were to be it seemed to the Government that it could not do better than base its legislation on the principles which had long been established and acted on in England. The Bill declared that in determining the amount of compensation to be awarded for property taken up for public purposes the Judge and assessors should take into consideration the market-price of the property, and the damage, if any, sustained by the person interested by reason of severing such property from his other property, or by reason of the acquisition injuriously affecting his other property in any other manner. These provisions were founded on the English Lands Clauses Consolidation Act. Compensation would be given on account of every sort of actual injury caused by the acquisition of the property."

"But the Bill," he went on to add, "also enumerated the matters which were not to be taken into consideration in determining the compensation to be made. The first of these was the degree of urgency which led to the acquisition. This was so obviously consistent with common sense that it was hardly necessary to have said anything about it in the Bill."

As regards the disinclination of the person interested to part with his property, this presented a real difficulty. He thought that though this was more of a sentimental than a real grievance it could not properly be ignored, and that something ought to be allowed "over and above the market-value of the land in consideration of the compulsory character of the sale."

"The third matter was that the officers were not to take into consideration any damage sustained by the proprietor which if caused by a private person would not render such person liable to suit. The object of this provision was to exclude vexatious claims which might be made on account of trifling inconveniences caused during the progress of the works. This was in accordance with the ruling of the English Courts, to the effect that unless something was done which would be actionable if done by a private person there was no right to compensation."

"The fourth principle was that the valuers were not to take into consideration any damage which, after the time of awarding compensation, was likely to be caused by or in consequence of the execution of the proposed work. This also was in accordance with a ruling of three distinguished English Judges, to the effect that the jury had no right to assess prospective or future damages caused by a work, since the extent of damages could not be ascertained till after the damage had been actually inflicted. The official valuers should not take into consideration purely speculative or imaginary damages. The fifth and sixth provisions were taken from the French law."

To these a seventh rule was subsequently added which excluded from consideration "any outlay or improvements on such land made, commenced or effected with the intention of enhancing the compensation to be awarded."

These principles of compensation introduced in 1870, have remained practically unaltered to the present day. They will be found embodied in the existing law (ss. 23, 24).

When the Council met on the 1st April, 1870, for the final consideration of the Bill, it was stated by the member in charge that numerous alterations had been made by the Select Committee, but, chiefly of minor importance. He referred, however, to "two substantial changes" which deserved some notice. The first of these was a provision for the payment of an additional sum of 15 per cent. on the market-value of the land taken, "in consideration of the compulsory character of the sale."

The second related to the repeal of Act XXII of 1863 (already referred to) "which enabled the Government to take up land for works of public utility proposed to be constructed by private persons or by companies." "It seemed to the Select Committee," he said, "that there was no reason for keeping on the Statute-book a separate law in regard to this particular subject, and that the opportunity should be taken of consolidating the whole law on the subject of acquiring land for public purposes or for works of public utility. Everything which that Act really contained of present value it was proposed to include in Part VII of the Bill."

After a further amendment that no award or agreement under the Act should be chargeable with stamp-duty, the Bill was passed and became Act X of 1870.

The Land Acquisition Act of 1870 was an elaborate and exhaustive measure, well-calculated to meet the requirements of the occasion. It provided a detailed and effective procedure for the acquisition of land, an improved tribunal for the decision of claims, and a well-defined set of rules for the assessment of compensation. It, moreover, consolidated the whole law on the subject. It was thus a great advance on the Acts of 1857 and 1863 which it replaced, and on the cognate measures which preceded them. It remained in operation for nearly twenty-four years.

In 1885, however, some fifteen years later, it was found necessary to repair an omission in the Act, which had apparently taken place through inadvertance. A Bill was accordingly introduced for this purpose, though not by way of amendment.

This was the measure known as Act XVIII of 1885, which is still in force. Its object was to make provision for the grant of compensation to the owners of mines situated under land which was sought to be acquired by the Government for railway construction or otherwise, which were not required for that purpose, and which the owners were prevented from working. This measure though styled the Land Acquisition (Mines) Act had in fact nothing to do with acquisition. It was purely a law of compensation.

When introducing the Bill the mover observed that the substance of the new measure had previously existed as a part of an Act which had been repealed. It was embodied in sections 50 and 51 of Act XXII of 1863. Why those provisions had been omitted from Act X of 1870, when that Act was passed, he had been unable to discover. However that might be it was now thought necessary to re-enact them, but with such modifications as were suggested by their later experience and knowledge. It was proposed to follow in the main the English law on the subject (8 & 9 Vic., c. 20, s. 77, *et seq.*).

"I am not coming to the council," he said, "as may be supposed from this preamble, in order to ask for leave to take away these private rights from the owners of permanently settled estates; on the contrary, I am coming for power to leave them alone. The defect in the present law which I desire to remedy is that we are practically obliged to acquire the whole rights, or to leave alone all rights, in any land we have to acquire. This is exactly what we do not want to do. We do not wish to deprive the owners of permanently settled estates of lucrative property which they may possess and which would be of no use to us. On the other hand, we do not desire to incur the loss to our finances which we should undoubtedly suffer by the heavy price we should have to pay for such proprietary rights. We therefore propose to bring in a new measure to remedy these defects." The Bill was passed on the 15th of October, 1885, and is to be "read with and taken as part of the Land Acquisition Act."

Seven years later it was found necessary to amend Act X of 1870 generally, as it had proved to be defective in many respects. A Bill was accordingly introduced for the purpose on the 11th March 1892.

In alluding to previous legislation on the subject, the Hon'ble Member in charge of the Bill spoke of the defects of the Act of 1857. "That Act," he said, "left the whole matter to the judgment of arbitrators, against whose decision there was no appeal whatever, unless upon the ground of corruption or misconduct, which were practically impossible

of proof. The law contained, moreover, no statement of the principles which should guide the arbitrators in their awards, and imposed on them no obligation to give any reasons for their findings. The result was that the public money was absolutely thrown away."

As for Act X of 1870, which they now proposed to amend, it provided "*first* that instead of arbitrators selected judicial officers, assisted by assessors, should determine the value of the land to be acquired, in all cases in which it was disputed; *secondly*, that if the Judge differed from the majority of the assessors as to the value of the land, an appeal should be allowed to the High Court, whose decision should be final; and, *thirdly*, it distinctly prescribed those considerations which should, respectively, be taken into account, and be neglected, in determining the amount of compensation which should be allowed."

This, he added, was "a great improvement on the law previously in force," but had not, "in practice, worked in an entirely satisfactory manner."

He then proceeded to point out the defects in the law which it was proposed to remedy. As regards the employment of assessors he said that the Act provided for the appointment of 'qualified' assessors, but it was impossible to obtain such persons, that is to say persons "qualified by education and by practical experience of the matters on which they are required to pronounce opinions." What happened in practice was that the 'person interested' appointed an assessor who was "virtually pledged beforehand to endeavour to protect and advance his interests." Moreover, in heavy cases the claimant's assessor was accustomed to receive "additional fees by private arrangement." Under such circumstances it was idle to suppose that the employment of assessors could in any way "lighten the labours of the Court, or relieve it of responsibility, or ensure justice as between the Government and the persons interested."

Another difficulty arose out of the provision requiring the determination of the market-value of the land to be made

at the time of awarding compensation. The award might not take place for two or three years after possession had been taken, and in the meantime the value might be affected either by the destruction or construction of buildings. Could any one argue that such alterations should affect the amount of compensation to be paid?

"The market-value should be fixed as at the date on which the Government gave notice of its intention to acquire the land. Nothing occurring subsequently to that date should be allowed to affect the question."

"A further ground of objection to the existing law," he added, "is that if the Judge and one of the assessors are agreed, there are no means of appealing, or even of obtaining a review of judgment, even in cases in which the award is based on a palpable error as to the facts."

Another difficulty lay in the extremely restricted powers of the Collector. He had, he said, no real power under the Act. No matter how trivial or how absurd the difference of opinion as to the value of the land, he could not enforce his award, but was obliged to make a reference to the Court.

It was the same if a single person interested failed to attend the inquiry, while it was often impossible—as in the case of a village community—to secure the presence of every one. Then as to the costs of the inquiry there was another injustice, for if the Collector's award was enhanced by ever so small a sum, he was burdened with the whole of the costs. The effect of this was to foster a litigious spirit and encourage the preferment of extravagant claims.

Another cause of complaint arose out of the Collector's obligation to "pay interest on the amount of the compensation (including the addition of 15 per cent.) from the time he had taken possession of the land." In many cases the payment of compensation was delayed through the fault of the "persons interested," by their raising frivolous objections, or failing to attend. It was unreasonable that the Collector should pay interest in such cases. This might be obviated by payment of the amount of the award as a part payment, when the award was questioned. "Interest should be payable

only on any addition which the Court may make to the amount of compensation tendered by the Collector."

Again, it was provided that the Government might "withdraw from an acquisition of land once embarked on," but as the law stood, it could not do so if the Collector had made an award or a reference to the Court. This was, he thought, "a very unnecessary restriction." "The Government should certainly be allowed to withdraw from the acquisition of land on payment of all costs and damages incurred and sustained by the other side."

Then again in cases where exorbitant damages were claimed on account of severance, it was thought that the Government should have the power of deciding, at any time, to take up the whole property. Part VII of the Act laid down the procedure to be adopted for acquiring land for companies, but it was necessary to make it quite clear that these provisions could not be used in furtherance of private speculations or enterprises in which the public had no direct interest.

Finally it was necessary to provide for the acquisition of lands out of Local Funds as well as other public funds. The Act as it stood was not clear on this point. Such were the defects in the law, and legislation was urgently needed to remedy them.

On the 12th January, 1893, the Hon'ble Mr. (Sir John) Woodburn, then in charge of the measure, moved that it be referred to a Select Committee, and this was accordingly done. On the 2nd February following he presented their Preliminary Report (See *Appx. D*).

The report, he said, was a very full one, for they had made many changes in the Bill. The Bill, as originally drawn, proposed "to make the Collector's award final, leaving any dissatisfied proprietor, the option of bringing a civil suit to alter it."

"We think," he said, "that it will sufficiently meet the requirements of the case if instead of providing rigidly that reference shall be made irrespective of the wishes of the proprietor, reference shall be made only when the proprietor so desires. We have to bear in mind that the proprietors

with whom the Collector deals are often poor peasants, who have neither the means nor the courage to challenge his decisions by a formal suit."

They were agreed that the system of trial with assessors should be discontinued. In practice the assessor had been found to be "not an adviser to the Judge but a partisan—a useless and very expensive addition to the costs of a reference." As Justice Parker had said,—“the nominees of the parties are faithful to their trust, and deliver their opinions with minds altogether unaffected by the evidence.”

Then as regards costs, the Bill, he said, left the Judge to apportion them under the ordinary rules of the Code of Civil Procedure. A fairer arrangement, they thought, was to provide that the Collector should ordinarily pay the costs when his award was enhanced, but, he added, “we have given the Judge authority to apportion costs when the claim was in his opinion extravagant and unreasonable.”

The term ‘market-value’ had been the subject of much discussion. The definition proposed in the Bill was not generally approved, and so they had decided that it was better not to define it all, but to “leave it to the Collector and the Court to ascertain and determine, in each case, what, under the conditions of the locality, would be a fair price for the land.”

As to the payment of compensation some important provisions had been added. The Collector was empowered to deposit the amount of his ‘award’ in Court, in the event of a “dispute as to the sufficiency of it, or as to the persons entitled to receive it.” The owner of the land might also take payment, although dissatisfied with the award, and “refer to the Court his claim for the balance.” This would relieve the Government from paying interest, at least to the extent of the ‘award,’ and there would no longer be any advantage to the owner in prolonging the proceedings. The Bill was thereafter republished and circulated for criticism.

On the 23rd March, 1893, the Hon'ble Member in charge presented the second Report of the Select Committee (See

Appx. D), in which they proposed a formal re-enactment of the law as amended by the Bill.

On the 30th March the Bill was ready to be passed, but owing to a desire on the part of one of the members, the Hon'ble Mr. Mackay (Lord Inchcape), for further time for consideration of its provisions, this was postponed till the following year.

During the interval that elapsed fresh suggestions had been made which necessitated a further reference to the Select Committee, and a Third Report was made on the 25th January, 1894 (See *Appx. D*).

On the 1st February, 1894, however the Bill came up for final consideration, when some further amendments were discussed. It was proposed that in the clause defining the term "public purpose" the word 'necessary' should be substituted for the word 'customary.' The object of the proposed amendment was to give the Local Governments wider powers for the provision of 'village-sites' when it appeared to be necessary, although not customary. It was urged that the clause, thus amended, would still be permissive and not obligatory, and that the Governments should have the power to act on an emergency such as the destruction of a village by the encroachment of a river.

It was contended on the other hand that the proposed amendment was unreasonable, for 'it was a man's own business to find his own house, and not to take his neighbour's land for the purpose, unless he was willing to sell it.' The Council were equally divided on the question—nine against nine—but His Excellency Lord Elgin, the President, gave his vote against it, and the motion was lost.

Another amendment, which was introduced on this occasion, was the substitution of 'three years' instead of 'one year,' in-section 10 (1). The longer period would, it was thought, be a fairer test.

A suggestion of much wider importance was made by the Hon'ble Dr. Rashbehary Ghose in his proposed amendment of section 23, by the substitution of the word 'value' for the

term 'market-value,' wherever it occurs. The reason for this proposal was that there were things which might come to be acquired under the Act which could not be said to have any market-value, such as ancient temples and property of that description. Such a case had actually come before the Madras High Court, and again on appeal before the Privy Council, where it was held that temples had no market-value. It was urged further that in the English Lands Clauses Act the term used was 'value' and not market-value.

A passage from '*Cripps on Compensation*' was also cited as follows:—"The value to the owner can be ascertained either by a valuation of the lands taken, with the addition of compensation for the incidental injury, or by what is known as the reinstatement principle. In either case, the test of compensation is value to the owner. The difference arises in the method to be adopted in ascertaining this value. In a majority of cases the value to the owner may be fixed by the value of the property taken, with the addition of compensation for incidental injury; but in some cases the value so ascertained would not be the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises, or lands taken, by premises or lands which would be to him of the same value."

The proposed amendment, which was based on this 'reinstatement principle,' was formulated by the mover on the passage quoted.

The Law Member, Sir A. Miller, favoured the suggestion, and thought the word 'value' a better word to use than 'market-value,' but he objected to any attempt being made to define the terms.

The Hon'ble Mr. (Sir W.) Lee-Warner thought it would be dangerous at that late stage "to touch this very debatable phrase 'market-value,' merely because in a particular instance the application of a market-value to the acquisition of a particular temple proved different." He mentioned

case where he had himself applied the reinstatement principle to the acquisition of a temple, to which it was impossible to assign a market-value. The term had been adopted after much discussion by the Select Committee and he would be sorry to see it altered.

The Hon'ble Sir Griffith Evans was against any alteration being made, and for the same reasons.

The Hon'ble Sir Antony (Lord) MacDonnell was also of the same opinion. He referred to the second Report of the Select Committee (*See Appx. D*), para. 14 of which says:—
“ We have again considered the question of a definition of the term ‘ market-value,’ but we adhere to the opinion of our Preliminary Report that it is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it ; the decisions of the several High Courts are at one in giving it the reasonable meaning of ‘ the price a willing buyer would give to a willing seller.’ ”

The Hon'ble Sir C. Pritchard thought that as the question had been considered three times by the Select Committee it had better be left alone. The amendment was finally negatived (*See sec. 23, post*).

The seventh clause to section 24 was added on this occasion, on the motion of Mr. (Sir W.) Lee-Warner. He thought it reasonable that any such outlay on the property about to be acquired should be allowed for, provided it was sanctioned by the Collector, but not otherwise.

In the first proviso to section 31 the words “ admitted to be ” were introduced at the instance of Sir A. Miller. “ No man,” he said, “ whose title is under dispute is entitled to take payment until that question is settled.”

The Bill was then passed, and came into force on the 1st March, as Act I of 1894.

The principal changes effected in the law by the new measure may be briefly summarised as follows:—The system of trial with the aid of assessors has been abolished ; the date of the declaration is now fixed as the time at which the

market-value is determined; a general Reference is no longer compulsory unless it is demanded by an aggrieved party; the Collector may now deposit the compensation-money in Court and thereby avoid the payment of interest on the whole amount; he may be relieved from the payment of costs under certain circumstances; the Government may withdraw from the acquisition of land which turns out to be too valuable to be worth acquiring, provided possession has not been taken; where exorbitant damages are claimed for 'severance' the Government may direct the acquisition of the entire property; land may be acquired under the Act by local authorities and the costs defrayed out of local funds; other modes of compensation besides the payment of money can now be resorted to; finally, it has been made clear that companies cannot make use of the provisions of the Act in furtherance of private speculations or enterprises in which the public has no direct interest.

SCHEDULE OF LAND ACQUISITION ACTS.

- Regulation I of 1824 (ss. 1-7); Bengal.
- Act I of 1850; Town of Calcutta.
- Act XXVIII of 1839 (ss. 15-21); Town of Bombay.
- Act XVII of 1850 (Railways); Do.
- Act XLII of 1850 (Railways); Bengal.
- Act XX of 1852; Madras Presidency.
- Act I of 1854; Town of Madras.
- Act VI of 1857; British India.
- Act II of 1861 (amending); British India.
- Act XXII of 1863 (Companies); Do.
- Act X of 1870; Do.
- Act XVIII of 1885 (Mines); Bengal, Madras.
- Act I of 1894; British India.

THE LAND ACQUISITION ACT

(I OF 1894).

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THE
LAND ACQUISITION ACT
ACT I OF 1894.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 2nd
February, 1894.)*

*An Act to amend the law for the acquisition of land for
public purposes and for Companies.*

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and
commencement.

- I. (1) This Act may be called
the Land Acquisition Act, 1894.
(2) It extends to the whole of British India; and
(3) It shall come into force on the first day of
March, 1894.

COMMENTARY.

Cf. Act X of 1870, sec. 1. Cf. also 8 & 9 Vic., c. 18.

"Owners of land may be required by the Legislature to surrender some or all of the rights they possess in or over their land."

for purposes of public utility. When the land itself has to be surrendered it is said to be compulsorily taken or purchased, but if some only of the rights in or over the land are required to be given up, as when an easement appurtenant to the land is destroyed, the land is commonly said to be injuriously affected. In practice the distinction between these cases is not always logically observed." Lord Halsbury's 'Laws of England,' Vol. VI, p. 5.

Sub-sec.(1).—"The scope and object of the Act is to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable:" *per* Straight, J., in *Imdad Ali Khan v. Collector of Farakhabad* (7 All. p. 819).

"It is an Act authorising the Local Government to make compulsory acquisition of lands for public purposes and for companies, and for determining the amount of compensation to be made on account of such acquisition. In making the acquisition the wishes of the owner are wholly irrelevant under the Act. It does not contain any provision for any objection on the part of the owner to the acquisition itself. All his objections are limited to the amount of compensation and matters connected therewith:" *Esra v. Secretary of State* (30 Cal. p. 74).

"From a review of the principal provisions of the Act, three propositions are established beyond the possibility of dispute, namely, *first*, that the Statute creates a right in the Local Government to acquire land needed for public and other purposes; *secondly*, that it confers upon the private individual whose land is thus compulsorily acquired a corresponding right to receive compensation therefor; and *thirdly*, while the Act provides for a summary determination by the Collector of the area and the value of the land and of the apportionment of the compensation, it also provides for the judicial determination, by a special Civil Court, of the measurement of the land, of the amount of the compensation, of the persons to whom it is payable, and of its apportionment among the persons interested:" *Bhandi Singh v. Ramadhin Roy* (10 C. W. N. 995).

But the provisions of the Act would not be applicable to a case when the Government claimed the land as their own. In the case cited above Straight, J., observed—"I do not think it was ever intended to be extended to a case in which the Collector claims the land on behalf of the Government or the Municipality,

and denies the title of other claimants to the land. Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector as seeking the acquisition of the land when he asserts that the land is his own, and that no other person has any interest in it :'' *Imdad Ali Khan v. Collector of Farakhabad* (7 All. p. 819). See also *Crown Brewery, Mussoorie, v. Collector of Dehra Dun* (19 All. 339). But see also *Babujan v. Secretary of State* (4 Cal. L. J. p. 258), under sec. 18, *post*.

Sub-sec. (2).—'British India' means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India: General Clauses Act (X of 1897), sec. 3 (7).

The Act has been declared in force in—

- (1) Upper Burma (except the Shan States), by the Burma Laws Act (XIII of 1898), s. 4.
- (2) Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (III of 1872), s. 3.
- (3) Angul District, by notification under s. 5 of the Angul District Regulation (I of 1894).
- (4) The Districts of Hazaribagh, Lohardaga (now called the Ranchi District) and Manbhum.
- (5) Pargana Dhalbhum and the Kolhan in the District of Singhbhum.
- (6) The District of Palamau, by notification under the Schedule District Act (XIV of 1874).
- (7) British Baluchistan, by notification under s. 5 of the same Act.
- (8) United Provinces, Tarai, by notification.
- (9) Bangalore, by notification.
- (10) Zanzibar, by order in Council (1896).

For the history of this Act, and those that preceded it, see Introduction; for the scheme of amendment, see Statement of Objects and Reasons (*Appx. D*).

CANALS, DRAINAGE, IRRIGATION.

The Land Acquisition Act has been made specially applicable for the construction of canal works, drainage and irrigation in—

Central Provinces ;
Punjab and N.-W. Frontier ; and
United Provinces ;

(by Act VIII of 1873, s. 10 : See *Appx. C, post*) ;

Burma (by Bur. Act II of 1905, s. 11) ;

Bengal (by Ben. Act V of 1864 (Canals), s. 3 ; by Ben. Act VI of 1880 (Drainage), s. 21 ; by Act VIII of 1895 (Sanitary Drainage), s. 16 ; and by Ben. Act III of 1876 (Irrigation), s. 52 ;

Bombay (by Bom. Act VII of 1879) (Irrigation), s. 39.

EMBANKMENTS.

It has been specially applied to the construction of embankments in—

Bengal (by Ben. Act VI of 1873, s. 29 ; Ben. Act II of 1882, ss. 36-41 ; and Ben. Act VII of 1866 (Orissa and Sunderbuns), s. 1).

FORESTS.

It has been made applicable for the acquisition of forest rights and lands in—

Bengal ; Bombay ; Central Provinces ; Punjab ; United Provinces,

(by Act VII of 1878, ss. 10, 37, 78) ;

It has been specially applied to forests in—

Assam (by As. Reg. VIII of 1891, ss. 11, 78) ;

Burma (by Bur. Act IV of 1902, ss. 13, 81) ;

Madras (by Mad. Act V of 1882, ss. 10, 30, 31, 68).

ANCIENT MONUMENTS.

It has been made applicable for the preservation of ancient monuments throughout British India (by Act VII of 1904, ss. 10, 21).

LOCAL BOARDS.

The Land Acquisition Act has been made applicable for the acquisition of land for the purposes of district and local Boards in the provinces of—

Bombay (by Bom. Act I of 1884, s. 72) ;

Central Provinces (by Act I of 1883, s. 37) ;

Madras (by Mad. Act V of 1884, s. 153) ;

Punjab (by Punj. Act II of 1906, s. 61) ;

United Provinces (by U. P. Act I of 1900, s. 57) ;

In Bengal, though the Act is not specifically named, general power to acquire land is given to all District Boards (by Ben. Act III of 1885, s. 20).

MUNICIPALITIES.

The Act has also been adapted to the requirements of municipal bodies in—

Ajmere (by Reg. V of 1886, s. 149) ;

Assam (by Ben. Act V of 1876, s. 37) ;

Bengal (by Ben. Act III of 1884, s. 35) ;

Calcutta (by Ben. Act III of 1899, ss. 556-8) ;

Bombay (province), (by Bom. Act III of 1901, s. 41) ;

Bombay (city), (by Bom. Act III of 1888, s. 91) ;

Burma (by Bur. Act III of 1898, s. 41) ;

Central Provinces (by Act XVI of 1903, s. 53) ;

Coorg (by Reg. II of 1907, s. 52) ;

Madras (province), (by Mad. Act IV of 1884, s. 279) ;

Madras (city), (by Mad. Act III of 1904, s. 407) ;

Punjab and N.-W. Frontier (by Act XX of 1891, s. 40) ;

United Provinces (by U. P. Act I of 1900, s. 57).

PORT TRUST.

It has been specially adapted to the requirements of Port Commissioners in—

Aden (by Bom. Act V of 1888, s. 24) ;

Bombay (by Bom. Act VI of 1879, s. 27) ;

Calcutta (by Ben. Act III of 1890, s. 58) ;

Chittagong (by Ben. Act IV of 1887, s. 14) ;

Karachi (by Bom. Act VI of 1886, s. 26) ;

Madras (by Mad. Act II of 1905, s. 33) ;

Rangoon (by Bur. Act IV of 1905, s. 32).

RAILWAYS.

The Land Acquisition Act has been applied to the requirements of Railways (by Act IX of 1890, s. 7, see *Appx. C, post*).

TRAMWAYS.

The Act is also applicable for the construction of Tramways (by Act XI of 1886, sec. 7 (3), see *Appx. C*).

TELEGRAPHS.

It has been adapted to the uses of the telegraph (by Act XIII of 1885, see *Appx. C*).

ELECTRICITY.

It has also been adapted for the supply of electrical energy (by Act IX of 1910, see *Appx. C*).

SALT.

The Act has been applied to the acquisition of private salt works in—

Bombay (by Bom. Act II of 1890, s. 25) ;

It is also applicable for the acquisition of land for the establishment of a chain of posts on the Indus River, to demarcate a zone for the prevention of smuggling of Kohat salt into,—

Punjab (by Act XIX of 1890, sec. 2).

WASTE LANDS.

The Act has been made applicable for the settlement of claims for waste lands (by Act XXIII of 1863, s. 20).

AJMERE ESTATES.

The Act has been made applicable for the acquisition of land in an *isthmari* estate in Ajmere for the purposes of railway construction or other works (by Reg. II of 1877, sec. 26).

CHITTAGONG HILL TRACTS.

The Local Government may make rules for the acquisition of land required for public purposes : Reg. I (B.C.) of 1900, sec. 18 (2) (h).

BURMA MINES.

Act I of 1894 has been made applicable for the acquisition of land on behalf of a lessee of Ruby and other stone tracts in Upper Burma (including the Shan States, the Chin Hills, and Kachin Hill Tracts) by Upper Burma Ruby Reg. (XII of 1887, sec. 16).

2. *Rep. Act X of 1914.*

All proceedings commenced, officers appointed or authorized, agreements published and rules made under the Land Acquisition Act, 1870, shall, as far as may be, be deemed to have been respectively commenced, appointed or authorized, published and made under this Act.

Any enactment or document referring to the Land Acquisition Act, 1870, or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

COMMENTARY.

Cf. Act X of 1870, sec. 2.

The first clause of this section which provided for the repeal of the previous Act has been rescinded by Act X of 1914 as being obsolete, but after a lapse of forty-five years the second clause is of hardly more than historical interest. The third clause, however, is still important. For a summary of the Land Acquisition Act of 1870, and the measures which preceded it, commencing from the year 1824, see Introduction, *ante*.

"*All proceedings commenced.*"—Where Land Acquisition proceedings were pending at the time when Act I of 1894 came into force, it was held, having regard to this provision, that they must be governed by the new Act and not by the old: *Nabin Chander Sarma v. Deputy Commissioner of Sylhet* (1 C. W. N. 562). See also *Balaram Ray v. Sham Sunder Narendra* (23 Cal. 526); and *Nilkanth v. Collector of Thana* (22 Bom. 802).

"*Officers appointed.*"—See secs. 3 (c), 3 (d), and sec. 40 (2), *post*.

"*Or authorized.*"—See sec. 4 (2), sec. 7, and sec. 38, *post*.

"*Agreements published.*"—See sec. 42, *post*.

"*Rules made.*"—See sec. 55, *post*.

"*Any enactment.*"—The Land Acquisition (Mines) Act (XVIII of 1883) is an example of this. See sec. 17 of that Act, *post*.

"*Or document.*"—See sec. 41.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

COMMENTARY.

Cf. Act X of 1870, sec. 3. *Cf.* also 8 & 9 Vic. c. 18, sec. 3.

In construing an Act 'the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered to see if the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a Code a particular branch of the law, is to be treated in this fashion, its utility will be entirely destroyed, and the very object with which it was enacted will be frustrated. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If for example, a provision be of doubtful import, such resort would be perfectly legitimate': *per* Lord Herschell in *Bank of England v. Vagliano Brothers* (L. R. [1891] A. C. p. 144).

These views were endorsed by Lord Macnaghten in *Norendra Nath Sircar v. Kalambasini Dasi* (L. R. 23 I. A. p. 26), and by Lord Watson in *Robinson v. Canadian Pacific Railway Co.* (L. R. [1892] A. C. 481).

"For those who have judicially to interpret a statute, the question is, not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the Legislature, if violence were done to the language in which their legislation has taken shape; but such a course would on the whole be quite as likely to defeat as to further the object which was in view. Whilst, however, it is necessary to resist any temptation to deviate from sound rules of construction in the hope of more completely satisfying the intention of the Legislature, it is quite legitimate, where more than one construction of a statute is possible, to select that one which will best carry out what appears from the general scope of the legislation and the surrounding circumstances to have been its intention." *per* Lord Halsbury, L. C., in *Brophy v. Attorney-General of Manitoba* (L. R. [1895] A. C. p. 216).

"The Land Acquisition Act is of an exceptional character. It aims at promoting important public interests, and to interests of such paramount importance, private interests may justifiably be subordinated. And it has been recognised that in interpreting the intention of the Legislature in statutes of that character a construction necessary to effectuate that intention must be given thereto." *Balvant Ramchandra v. Secretary of State* (29 Bom. p. 505).

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

COMMENTARY.

Cf. Act X of 1870, sec. 3; Bom. Act IV of 1898, sec. 47 (1).
Cf. also 8 & 9 Vic., c. 18, sec. 3.

"Includes."—The word 'includes' has an extending force, and does not limit the meaning of the term to the substance of the definition: *In the matter of Nasibun* (8 Cal. p. 536).

"The use of the verb 'includes' shows that the legislature intended to lump together in one single expression—*viz.*, 'land' several things, such as the soil, the buildings on it, any charges on it, and other interests in it, all which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require." *Government of Bombay v. Esufali Salebhai* (34 Bom. at p. 625).

"Land."—The word 'land' comprehends in law any ground, soil or earth whatsoever. It will include houses and buildings of all kinds, for the ownership of land carries with it everything both above and below the surface, for *cujus est solum, ejus est usque ad coelum et ad inferos*, or more briefly *cujus est solum ejus est alium*: 2 Bl. Com., 16-18; Co. Lit., 4a.

"The word 'land' includes everything from the heaven on the one side to the centre of the earth on the other": *per Jessel, M. R., In re Metropolitan District Railway Co. & Cosh* (L. R. 13 Ch. D. at p. 620).

A pond or piece of water is 'land covered with water': *Co. Lit. 5a; Touch. 90*. "Land is not the less land for being covered with water." *Reg. v. Leeds and Liverpool Canal Co.* (7 A. & E. p. 685).

"The word 'land' as defined in this Act seems to be nearly equivalent to the term 'immoveable property', as defined in the General Clauses Act [X of 1897, sec. 3 (25)]. 'Immoveable property,' it is there stated, "includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

The term 'immoveable property' as used by the Indian Legislature has been held by the Privy Council to be identical with "lands or houses." The word 'immoveable' is used as something less technical than 'real,' and the term "immoveable property comprehends certainly all that would be real property according to English law, and possibly more :'" *Maharana Fettehsanji v. Dessai* (L. R. 1 I. A. p. 52).

'Immoveable property' is defined in the Indian Succession Act (X of 1865, sec. 3) as including land, incorporeal tenements, and things attached to the earth, or permanently fastened to anything which is fastened to the earth; which is practically the same as the foregoing definition.

A much more elaborate definition of the term is given in the Indian Registration Act (III of 1877), sec. 3, which is more akin to a previous definition contained in the General Clauses Act of 1868 (since repealed). It is as follows :—"Immoveable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass." Moveable property, on the other hand is there stated to include "standing timber, growing crops and grass," and also "fruit upon and juice in trees."

The Transfer of Property Act (IV of 1882), also imposes this distinction. For the purposes of that Act "immoveable property does not include standing timber, growing crops or grass." These are distinguished from "trees and shrubs," which are treated as part of the land, and regarded as immoveable property. Timber trees, standing crops and growing grass or herbage, on the other hand, are severable from the land and are therefore regarded as moveable property. But though transferable as such they would, as being things "attached to the earth" pass to the transferee on a sale of the land.

These distinctions which have to be observed in applying the rules pertaining to sales and mortgages under the Transfer of Property Act are of little importance in the acquisition of land. There can be no doubt that such things would be included within the term 'land' as being "things attached to the earth," and would have to be considered as subjects for compensation by the Collector when making an award under sec. 11 or framing a reference under sec. 19. It is presumed that if a Collector must state particulars of 'trees' and 'standing crops' "for the information of the Court," it can only be for the purpose of assessing compensation. See sec. 19 (1) (a).

The English definition in the Lands Clauses Consolidation Act of 1845 (8 & 9 Vic., c. 18, sec. 3) and cognate measures is as follows:—"The word 'lands' shall extend to messuages, lands tenements and hereditaments of any tenure." This has been held by Lord Bramwell to mean 'of whatever tenure, if any.' In other words the last expression 'of any tenure' must be read as applying to all that precedes and not merely to the last term: *Great Western Railway Co. v. Swindon and Cheltenham Railway Co.* (L. R. 9 A. C. 787). The effect of the decision in this case is to include 'incorporeal' as well as 'corporeal' hereditaments.

"*Benefits to arise out of land.*"—This expression would seem to cover the rights commonly known as 'easements,' which are more specifically provided for in the next clause.

But it is to be observed that the Act does not authorise the acquisition of an easement *per se*, i.e. apart from the land, nor can an owner be compelled to grant one over his land. It only provides for the grant of compensation in cases where, by the acquisition of land, a right is extinguished or injuriously affected.

This distinction was very clearly explained by Lord Selborne when he said—"The law authorises the entry, after notice, upon land which is to be acquired, but an easement is not a thing which is capable of being entered upon," though compensation must be given when it is interfered with: *Clark v. School Board for London* (L. R. 9 Ch. App. 120). ••

"The Legislature did not mean," said Lord Cranworth, L. C., "that if I have a field free from any right of way, I shall be bound upon compensation to substitute for that a field subject

to a right of way. If it is to be taken from me, it must be taken *in solido* :'' *Pinchin v. London and Blackwall Railway Co.* (5 DeG. M. & G. 861).

In a later case, already referred to, the House of Lords pronounced the opinion that the definition of the term 'lands' in the Lands Clauses Act, upon a proper construction, must be taken to include incorporeal as well as corporeal hereditaments, and the view was expressed by Lord Bramwell that the Act was applicable to "all cases where land is required, and certainly some of those cases might include the requirement of easements." Lord Watson observed :—"I can see no reason for holding that the word 'lands' must be restricted to corporeal hereditaments. If a landowner is willing to sell a right of use, and such a right is sufficient for all the purposes of the special Act, I cannot conceive that it was the intention of the Legislature to enact that the landowner should not sell or the company purchase that limited right. Granting, however, that the expression 'lands' in the Act of 1845, when the terms and context of the Act are alone regarded, bear a more restricted meaning than is assigned to it by the interpretation clause, it does not follow that it must continue to have the same limited meaning when its clauses are embedded in a context which enlarges the scope of the general Act. When that Act is incorporated with enactments which expressly confer upon the promoters power to purchase and take incorporeal hereditaments by compulsion, I think its clauses ought by virtue of their new context to be construed so as to include and apply to hereditaments which are not corporeal :'' *Great Western Railway Co. v. Swindon and Cheltenham Railway Co.* (L. R. 9 A. C. 787).

From these observations it is clear that whatever may be the correct solution of the question the addition of a special Act with special provisions expressly conferring the power to acquire incorporeal rights would affect its interpretation accordingly. But whichever view is taken, the result, it is presumed, must be the same. There seems to be no practical difference between purchasing an easement or incorporeal right and paying compensation for the infringement of it. Clause (b) of this section provides for the latter contingency.

It has been held in India that incorporeal rights cannot be acquired apart from the land over which they are exercised. "Land

is defined in the Act as *including* benefits arising out of land. But land is not defined as *meaning* benefits arising out of land. Therefore fishery rights are not land ; and it is only land, including the rights arising out of it, but not the rights detached from the land, that can be acquired under the Act :'' *Shyam Chunder Mardraj v. Secretary of State* (35 Cal. p. 528). And see also *Babujan v. Secretary of State* (4 Cal. L. J. p. 258).

There is a well-marked distinction between 'land' and 'an interest in land.' "That distinction is preserved throughout the Act, where 'land' is always used to denote the physical object ; which after all is the thing that has to be acquired. Provision is made for compensation to all persons interested, but claims on this head are to be adjusted in the apportionment prescribed under sections 29 and 30, and do not fall to be considered till after the Court has determined the market-value of the land under section 23 (1) :'' *Bombay Improvement Trust v. Jalbhoy* (33 Bom. p. 495). See also sec. 4 (*post*), the provisions of which may be read in the light of Lord Selbourne's remarks (*ante*). And see under sec. 16, *post*.

"*Attached to the earth*," &c.—This expression has been defined in the Transfer of Property Act (IV of 1882), sec. 3, as meaning—

- (a) "rooted in the earth, as in the case of trees and shrubs ;
- (b) imbedded in the earth, as in the case of walls or buildings ;
- (c) attached to what is so imbedded, for the permanent beneficial enjoyment of that to which it is attached."

It has been held that trees are things 'attached to the earth,' and consequently within the definition of 'land' in sec. 3 (a). They must therefore be included in any estimate of the market-value of the land on which they grow, and which is sought to be acquired: *Sub-collector of Godavari v. Seragam Subraroyadu* (30 Mad. 151).

Where the land to be acquired had erected on it certain works ~~adaptable~~ to the manufacture of salt, it was held that it was right to estimate the value of them in conjunction with the land, at the time of assessment: *Joseph v. The Salt Company* (17 Mad. 371).

The Transfer of Property Act (IV of 1882), sec. 8, further provides that a transfer of property passes "all the interest which

the transferor is then capable of passing in the property, and in the legal incidents thereof."

"Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and where the property is machinery attached to the earth, the moveable parts thereof; and where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith."

Mines and Minerals.—It has been held in England, under the Railway Clauses Act of 1845, in which the definition of the term is the same as in the Lands Clauses Act, that the expression 'lands' would include mines. Lord Cairns, L. C., has observed, "Of course 'lands' includes 'mines'." *Smith v. Great Western Railway Co.* (L. R. 3 App. Cas. p. 180).

This view was endorsed by the House of Lords in a case under a cognate Act, the Waterworks Clauses Act of 1847, in which the word 'lands' was similarly defined. There Lord Bramwell said, "I am of opinion that 'lands' in sec. 6 includes 'mines'. The words in the interpretation-clause are the same as in the Railway Clauses and the Lands Clauses Acts." Lord Halsbury, L. C., observed, "I cannot doubt that the word 'lands' does include 'mines and minerals.'" Lord Watson also said, "The point appears to me to be placed beyond doubt by the observations of the Lord Chancellor (Earl Cairns)." Lord Herschell added, "The word includes 'tenements, hereditaments, and heritages of any tenure,' and I think this language is large enough to cover mines." *Holliday v. Mayor of Wakefield* ([1891] A. C. 81).

Lord Esher, M. R., in a later case under the Railway Clauses Act expressed the same views. "The word 'land' means," he said, "any land, including minerals, which the company propose to take. What they take, they take as 'land'." *In re Lord Gerard & London and North-Western Railway Co.* ([1905] 1 Q. B. p. 464).

The word necessarily includes 'mines and minerals': *Errington v. Metropolitan District Railway* (L. R. 19 Ch. D. p. 568). A grant of land includes all mines and minerals unless excepted from the conveyance: 2 Bl. Com. 18. And see also under ss. 1 and 3, Act XVIII of 1885, *post*.

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

COMMENTARY.

Cf. Act X of 1870, sec. 3; Bom. Act IV of 1898, sec. 47(1).
Cf. also 8 & 9 Vic., c. 18, ss. 3, 68.

"Includes."—See under cl. (a), *ante*.

"All persons claiming an interest in compensation."—The person entitled to compensation is the person from whom the land is taken; *per* Peacock, C. J., *Maharaja Mahatap Chand Bahadoor v. Bengal Coal Co.* (10 W. R. 391).

When land is taken for public purposes the party *primâ facie* entitled to compensation is the proprietor. Any party claiming the same as against the proprietor in virtue of a right created by the latter, *e.g.*, as a mukararidar upon the land, is bound to prove the title he pleads: *Issur Chunder Banerjee v. Suttio Dyal Banerjee* (12 W. R. 270).

The party in possession at the time is *primâ facie* entitled, until some one else establishes a better claim: *Chundee Churn Chatterjee v. Bidoo Budden Banerjee* (10 W. R. 48).

Where a 'patni' and a 'darpatni' have been granted in the land sought to be acquired for a public purpose, the zemindar, patnidar, and darpatnidar are 'persons interested,' as well as occupancy-ryots in possession of the land, and all are entitled to compensation. "The parties who usually suffer most from lands being taken for Government purposes are either the ryots with a right of occupancy, or the holders, whoever they may be, of the first permanent interest above the occupancy-ryots." *per* Garth, C. J., in *Godadhar Dass v. Dhunput Sing* (7 Cal. p. 589).

Any person who has a permanent and transferable interest in a ~~tenure~~ is entitled to compensation: *Dunne v. Nobo Krishna Mookerjee* (17 Cal. 144).

A yearly tenant of a tank with rights of fishery is, for the purposes of the Act, in the same position as a yearly tenant of agricultural land. He is a 'person interested,' and equally

entitled to compensation : *Narain Chandra Boral v. Secretary of State* (28 Cal. p. 152).

Where certain claimants had an unexpired lease for nine years of the land for gardening purposes, and there were fruit trees on the land when possession was taken, they were held to be 'persons interested' within the meaning of sec. 3 of the Act, and entitled to share in the total compensation for the fee simple of the property, as the acquisition would necessarily extinguish their interest in the land : *Collector of Poona v. Kashinath Khasgiwalla* (10 Bom. p. 591).

A tenant-at-will would be entitled to the value of huts which he had erected on the land, although his tenancy itself might be worth nothing : *Secretary of State v. Belchambers* (33 Cal. p. 408).

An under-raiyat or 'bhagidar' is not a 'person interested,' and has no claim to compensation : *Saikh Hasrat v. Jagat Narain Roy* (11 C. W. N., notes, 312).

An Ijaradar or farmer of rents is a 'person interested,' and "entitled to a share in the sum awarded as compensation, in proportion to the loss which has accrued to him in consequence of the land being taken for public purposes :'" *Railway Commissioner v. Nuzeerooddeen Ahamed* (1 Hay, 157). And see under sec. 30, *post*.

Where a lease of mining rights for a term of sixty years contained a provision whereby the lessee had power to sink pits in any part of the property, and a railway company acquired a portion of it, under the Act, for the construction of a railway, it was held that he was entitled to be compensated for the interference with his right to sink pits in that portion of the land which was taken by the railway, and as such was a 'person interested' in the land : *In re Masters and Great Western Railway* ([1901] 2 K. B. 84).

On the other hand where by an agreement with the lessees of a theatre certain persons were given the exclusive right for a term of years to sell refreshments and the necessary use of the premises reserved for that purpose, together with other attendant privileges, it was held that the contract did not confer on them an 'interest in land' which could form the subject of compensation under the Lands Clauses Act, 1845, s. 68 : *Frank Warr & Co., Ltd. v. London County Council* ([1904] 1 K. B. 713).

"Interested in land."—The claimant's interest must be that of an owner or occupier of the land. In the English Act the word 'owner' is defined as meaning "any person or corporation who would be enabled to sell and convey lands to the promoters of the undertaking."

Workmen or labourers employed on the land cannot be said to have such an interest. It has been held by the Privy Council that no compensation is "ordered by the Act except to persons interested in the land. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market-value of the land. But no compensation is given to persons not interested in the land on the ground that their earnings may be affected by the change of ownership, or indeed on any ground. Quarrymen are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages:" *Secretary of State v. Shanmugaraya Mudaliar* (L. R. 20 I. A. p. 88).

As to apportionment of compensation among the 'persons interested' see ss. 11, 18, 30, *post*. As to the award, see sec. 23.

"An easement affecting the land."—This provision was added by the Select Committee expressly, "to prevent any doubt as to the right to compensation of persons who hold easements affecting lands taken up" (see Third Report, cl. 4, *Appx. D*).

But it is only as a subject for compensation that an easement can be considered, when it has been injuriously affected or destroyed (see under sec. 3, cl. (a), *ante*, and under sec. 16, *post*).

"A person."—This includes any company or association or body of individuals, whether incorporated or not: General Clauses Act (X of 1897), sec. 3 (39). For 'company' see cl. (e) and Act XVIII of 1885, sec. 16 (b), *post*.

"Land."—See sec. 3 (a), *ante*.

(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner ~~and~~ any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

COMMENTARY.

Cf. Act X of 1870, sec. 3.

"Means."—When the Legislature intends to speak exhaustively it uses the word 'mean' or 'means': *Balvantrav Bapaji v. Purshotam Sideshwar* (9 Bom. H. C. R. p. 106).

"Includes."—See under cl. (a), *ante*.

The Collector is the expert official charged with the duty of fixing the sum which in his best judgment is the value of the land, and should be offered for it: *per* Lord Robertson in *Ezra v. Secretary of State for India* (32 Cal. at p. 629).

"The Collector is the officer deputed by Government to fix the amount which Government are prepared to offer for compensation for the land:" *In re Esufali Salebhai* (10 Bom. L. R. p. 996). See also under sec. 11, *post*.

"Collector of a district."—This would apparently exclude the Collectors of towns such as Calcutta and Karachi, whose functions are entirely different.

Where the Collector's jurisdiction under the Act extended over several districts, including Calcutta, and he was posted to the sudder station of the 24-Parganahs, *viz.*, Alipore, where his office was, it was held that he was justified in holding his proceedings under the Act there: *Ezra v. Secretary of State* (30 Cal. p. 73).

In the event of an acquisition of land or buildings by the Calcutta Municipality "it is open to the Chairman of the Corporation to perform the duties of a Collector, but it is not obligatory on him to do so:" *Secretary of State v. Belchambers* (33 Cal. p. 401). See also Ben. Act III of 1899, s. 557 (a).

"Any officer specially appointed."—There is a distinction between 'officers appointed' and 'officers authorised' (see sec. 2 (2), *post*). An officer specially appointed to perform the functions of a Collector would be in all respects a 'Collector.' But an officer 'specially authorised' would only be appointed for a particular purpose, to which his functions would be limited, and he would exercise those functions under the control of the Collector (see ss. 4, 5, *post*).

"The Collector acts as the agent of Government for the purposes of acquisition, clothed with certain powers to require the attendance of persons to make statements relevant to the matters

which he has to enquire into. He is in no sense of the term a judicial officer, nor is the proceeding before him a judicial proceeding. The award which he makes does not possess any finality, so far as the persons interested are concerned, for under sec. 18 any person interested, who has not accepted the award, may, within a certain time, by written application to the Collector, require a reference of the matter for the determination of the Court. This shows that, so far as the Collector is concerned, he is not a Court :'' *Ezra v. Secretary of State* (30 Cal. at p. 85).

The expression 'Court' in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector to administer an oath or require a verification : *Durga Das Rukhil v. Queen-Empress* (27 Cal. p. 820).

Nor is a Deputy Collector acting under the Land Acquisition Act a judicial officer (*Id*).

A Collector may, nevertheless in holding his enquiries exercise the functions of a Court for the purpose of enforcing the attendance of witnesses and parties, or the production of documents (see sec. 14), or in the appointment of a guardian *ad litem* (see s. 3, (g) (ii), *post*).

"*Local Government*."—This shall mean the person authorised by law to administer Executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner : General Clauses Act (X of 1897), sec. 3 (29).

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act :

COMMENTARY.

Cf. Act X of 1870, sec. 3. *Cf.* also Ben. Act V of 1911, sec. 11 ; and Bom. Act IV of 1898, sec. 48.

For the purpose of acquiring land in the cities of Calcutta and Bombay under the Improvement Acts a Tribunal composed of a President or Judge and two assessors is constituted (see *Appx. A, B*).

"*Means*."—See under cl. (c), *ante*.

“*Principal Civil Court of original jurisdiction.*”—This would be in a district the Court of the District Judge. He would have jurisdiction to determine all questions referred to him under Parts III & IV (ss. 18-30), and from his decision an appeal would lie to the High Court (see sec. 54, *post*).

“*Local Government.*”—See under sec. 3 (c).

“*Special judicial officer.*”—The power to appoint special courts in certain cases was added by the Select Committee to meet the requirements of certain provinces (see Preliminary Report, cl. 2, *Appx. D*).

The ‘Court’ appointed under this clause generally for the town of Calcutta is the District Judge of the 24-Parganahs. This has nothing to do with the special Tribunal appointed under the Calcutta Improvement Act of 1911, referred to above.

For the town of Madras the First Judge of the Court of Small Causes has been appointed.

Any judicial officer may be appointed, and his decision would be appealable under sec. 54, but “subject to the provisions of the Code of Civil Procedure” (see under s. 54, *post*).

(e) the expression “Company” means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent :

COMMENTARY.

Cf. Act X of 1870, sec. 3. *Cf.* also Bom. Act IV of 1898, sch.

“*Means.*”—See under cl. (c).

“*The Indian Companies Act.*”—The Act of 1913 replaces Act VI of 1882. The provisions of this Act which relate to Companies are contained in Part VII (ss. 38-44), *post*.

“*The English Companies Acts.*”—The English Acts, 1862 to 1890, are no longer in force. They have been replaced by ‘The Companies (Consolidation) Act, 1908 (8 Edw. VII, c. 69),’ under which Companies are now registered.

See also the definition in Act XVIII of 1885, sec. 16 (b) and sec. 17, *post*.

(f) the expression "public purpose", includes the provision of village-sites in districts in which the Local Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision : and

COMMENTARY.

Cf. Bom. Act IV of 1898, sch.

"Includes,"—See under cl. (a).

'Public purpose.'—"There is no definition of a 'public purpose' in the Act, nor any limitation regarding what is likely to prove useful to the public. For obvious reasons both matters are left to the absolute discretion of the Local Government : " *Exra v. Secretary of State* (30 Cal. p. 77).

It seems to be clear, however, that the purpose in view should contemplate the public good. "Where the Legislature confers powers on any body to take lands compulsorily for a particular purpose it is on the ground that the using of that land for that purpose will be for the public good : " *per* Lord Blackburn in *Ayr Harbour Trustees v. Oswald* (L. R. 8 A. C. 623).

A 'public purpose' has been defined to be one in which "the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned ; " *per* Lord Dunedin in *Moosa Hajee Hassan v. Secretary of State* (13 All. L. J. p. 120).

"Owners of land may be required by the Legislature to surrender some or all of the rights they possess in or over their land for purposes of public utility : " Lord Halsbury's 'Laws of England,' Vol. vi, p. 5.

Where land was acquired by the Bombay Government for a District Municipality for the purpose of widening a street, it was held that the purpose was one which was "conducive to the promotion of public health, safety and convenience," and that the Court had no jurisdiction to interfere : *Shastri Ramchandra v. Ahmedabad Municipality* (24 Bom. p. 600). And see also the Calcutta Municipal Act (Ben. Act III of 1899), sec. 557 (b), *Appx. C, post.*

When land is acquired for a Company under Part VII (ss. 38-44) of the Act the object in view must be a work of public utility (s. 40), but of this again the Government are the sole arbiters (s. 6 (3)).

"The only parties concerned in this enquiry are the Government, which has to be satisfied, and the Company, which has to furnish materials for the purpose of satisfying the Local Government:" *Ezra v. Secretary of State (Id.)*.

"Includes the provision of village-sites."—At the final meeting of the Council for consideration of the Bill an effort was made to substitute the word 'necessary' for the word 'customary' in this clause, but the amendment was not carried (see Introduction). The provinces in which the custom prevails are Bombay, Madras and Burma.

"Local Government."—See under sec. 3 (c), *ante*.

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court,

as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act ; and

(iv) no person " entitled to act " shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

COMMENTARY.

Cf. Act X of 1870, sec. 3. Cf. also 8 & 9 Vic., c. 18, sec. 7.

The first three paragraphs of this clause have been reproduced almost verbatim from Act X of 1870, while the provisions themselves were borrowed originally from the English statute. The provisos, however, are entirely new, and they have somewhat modified their meaning.

" *Entitled to act.*"—This expression is here employed in two senses. With regard to trustees, guardians, and committees, it clearly refers to acting for others, whereas with regard to a married woman it obviously means acting for herself. It is used in the former sense expressly in sec. 9 (3), and elsewhere by implication, e.g., in ss. 31, 32.

" *Trustees for other persons beneficially interested.*"—"Trust" includes every species of express, implied, or constructive fiduciary ownership. 'Trustee' includes every person holding expressly, by implication, or constructively a fiduciary character: Specific Relief Act (I of 1877), sec. 3.

"A 'trust' is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; the person who reposes or declares the confidence is called the 'author of the trust'; the person who accepts the confidence is called the 'trustee'; the

person for whose benefit the confidence is accepted is called the 'beneficiary'; the subject-matter of the trust is called the 'trust-property' or 'trust-money'; 'the beneficial interest' or 'interest' of the beneficiary is his right against the trustee as owner of the trust-property." Indian Trusts Act (II of 1882), sec. 3.

The term 'trustee' would include an executor or administrator of a deceased person: Indian Trustee Act (XXVII of 1866), sec. 2.

A trustee might be empowered to convey trust-property by the terms of the trust, or, in the absence of express provision, under authority conferred by the Trustees and Mortgagees Powers Act (XXVIII of 1866), sec. 25. If such powers were conferred by the trust and not availed of, through a disability or otherwise, the Court might remedy the default by a fresh appointment carrying with it full powers, under the Indian Trustee Act (XXVII of 1866), sec. 35.

A trustee would therefore seem to be a person not only 'entitled to act', but also competent to receive the compensation-money' in terms of proviso (iv).

The words of the English statute are "trustees or feoffees in trust for charitable or other purposes, executors and administrators." It is probable therefore that all are intended to be included, although they are not expressly mentioned in the section. The definitions cited above are certainly comprehensive enough to include them.

An 'executor' means "a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided;" and an 'administrator' means "a person appointed by a competent authority to administer the estate of a deceased person, when there is no executor." Indian Succession Act (X of 1865), sec. 3.

"*A married woman in cases to which the English law is applicable.*"—By the English law if a married woman were "seised in her own right," i.e., absolutely entitled to land for her separate use she was entitled to convey it. But since the Married Woman's Property Act, 1882 (45 & 46 Vic., c. 75), a married woman may acquire, hold, and dispose of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, and without the intervention of any trustee.

By the Married Woman's Property Act, 1893 (56 & 57 Vic., c. 93, sec. 3), she was empowered in like manner to dispose of her property by will, as though she were a *feme sole*.

By the Married Woman's Property Act, 1907 (7 Edw. VII, c. 18, sec. 1), "a married woman is able without her husband, to dispose of, or join in disposing of real or personal property held by her solely, or jointly with any other person as trustee, or personal representative, in like manner as if she were a *feme sole*."

Such is the English law which pertains to married women's property in England, but it is difficult to see in what cases it would be applicable to the acquisition of land in India. The words of the Lands Clauses Act of 1845 (sec. 7), from which this clause is taken, are "such married women, whether they be of full age or not, as if they were sole and of full age." The reproduction is almost verbatim, but its application is far from clear.

In India the law which pertains to the transfer of or succession to immoveable property is regulated by the Indian law. The Indian Succession Act (X of 1865), sec. 4, provides, as regards persons married after the 1st January 1866, that "no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried."

This would seem to place all married women to whom that Act applies on the same footing as the English statutes have placed married women in England. A married woman in India (not being a Hindu, Muhammadan or Buddhist) could therefore alienate any property of which she was possessed and which was not held subject to a condition restraining alienation, within the meaning of sec. 10 of the Transfer of Property Act (IV of 1882). Proviso (iv) would have no application to the case of a married woman as she would not be acting for any person other than herself.

"*Guardians of minors*."—"A 'guardian' means a person having the care of the person of a minor or of his property, or of both his person and property."

"A 'minor' means a person who under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority."

“ A ‘ ward ’ means a minor for whose person or property, or both, there is a guardian : ” Act VIII of 1890, sec. 4.

The relations of guardians and wards are regulated, throughout British India, subject, however, to the jurisdiction and authority of the Courts of Wards and the powers of the High Courts, by the Guardians and Wards Act (VIII of 1890).

It is provided by sec. 28 of that Act that “ where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.” And sec. 29 provides that “ where a person other than a Collector, or than a guardian appointed by a will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not without the previous permission of the Court (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or (b) lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which the ward will cease to be a minor.” These two sections appear to comprise generally the law as to alienation of a ward’s property.

The powers of the High Courts established by statute (24 & 25 Vic., c. 104) would, it is presumed, be those conferred by the Infants Property Act, 1830 (11 Geo. IV & 1 Will. IV, c. 65), which was extended to India by Act XXIV of 1841, sec. 2. This contains the law relating to Infants, Females Covert, Idiots, Lunatics, and persons of unsound mind.

The authority of the Courts of Wards in such matters is regulated by the various local enactments by which they are constituted. For—

Ajmere by Reg. I of 1888 ;

Bengal by Ben. Act IX of 1879 ;

Bombay by Bom. Act I of 1905 ;

Central Provinces by Act XXIV of 1899 ;

Madras by Mad. Act I of 1902 ;

United Provinces by U. P. Act III of 1899 ;

Punjab & N.-W. F. P. by Punj. Act II of 1903.

Under Act X of 1870, which did not contain these provisos, the Darbhanga Municipality acquired from the Manager of the Darbhanga Raj, which was then under the Court of Wards, a parcel of land for the construction of a public bathing ghât, for the "nominal compensation" of one rupee. It was held by the Privy Council that this was virtually a gift, and that the Court of Wards had no power, under Ben. Act IV of 1870 (since repealed), to give away the land of a ward, although there was no bar to its acquisition on legitimate terms.

"Although the Court of Wards had not power to alienate the land for the purpose for which it was required, possession might have been lawfully taken of it if the provisions of the Land Acquisition Act had been complied with. But they were not. The Collector made no inquiry into the value of the land. It is not true, as the High Court seems to have thought, that, as the Maharaja if he were of age, might waive the right to compensation, his guardian might do so. The Maharaja, if of age, might have made a present of the land to the town, and probably, if it was only to be used as a bathing ghât, would have done so ; but it was known by all parties that the Manager had no power to do this. The offer and acceptance of the rupee was a colourable attempt to obtain a title under the Land Acquisition Act without paying for the land : " *Luchmeswar Singh v. Chairman of the Darbhanga Municipality* (18 Cal. 99).

"*Committees or managers of lunatics.*"—The law relating to lunatics in British India is contained in the Lunacy Acts (XXXIV and XXXV of 1858). The former operates within the jurisdiction of the Supreme or High Courts, and the latter in the districts beyond that jurisdiction.

The word 'lunatic,' as used in these Acts, means "every person found by due course of law to be of unsound mind and incapable of managing his affairs" (ss. 23 and 32).

The powers of a 'committee' appointed under Act XXXIV of 1858 are defined in sec. 19. "The 'committee' of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage, or other disposition of his estate as the Court shall order.

In like manner such 'committee' shall, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit, or in the character of trustee or guardian."

The powers of a 'manager' appointed under Act XXXV of 1858 are defined in sec. 14 of that Act. "Every manager of the estate of a lunatic appointed as aforesaid may exercise the same power in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Court previously obtained."

This provision does not apply, however, to estates of lunatics when they are under the charge of the Court of Wards in Bengal (Ben. Act IX of 1879, sec. 10). Rules applicable to such cases are contained in sec. 19 of that Act.

Proviso (i).—"Person."—See under cl. (b), *ante*.

"Collector or Court."—See clauses (c), (d), *ante*.

"Adverse to the interest."—"Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit: Provided that the interest of such person is not adverse to that of the minor. Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit, unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be:" Civ. Pro. Code (Act V of 1908), O. xxxii, R. 4.

Proviso (ii).—"Person interested."—See cl. (b), *ante*.

Proviso (iii).—"The provisions of Chapter XXXI."—These related to suits by or against minors and persons of unsound mind, and have been repealed and replaced by Order xxxii cited above.

Proviso (iv).—This must be read with the first part of cl. (g), which specifies the various persons who are "entitled to act;" and with the provisions of Part v (ss. 31-34), which relate to the payment of compensation.

"Competent to alienate."—When the power to alienate is wanting, the money must be deposited in Court.

PART II.

ACQUISITION.

Preliminary Investigation.

4. (1) Whenever it appears to the Local Government that land in any locality is likely, to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Publication of preliminary notification and powers of officers thereupon.

(2) Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such

occupier at least seven days' notice in writing of his intention to do so.

COMMENTARY.

Cf. Act X of 1870, sec. 4 ; Bom. Act IV of 1898, Sch.

Cf. also 8 & 9 Vic., c. 18, ss. 16—68.

Part II (ss. 4—17) contains the rules laid down for the guidance of Collectors entrusted with the acquisition of land for public purposes. Section 4 relates merely to the preliminary investigation which must take place before a decision can be come to as to the expediency of the proposed acquisition.

Sub-sec. (1).—The essential elements of this clause are—*(a)* the notification by the Local Government in the Gazette of the contemplated acquisition, and *(b)* the public notice by the Collector of its substance in the locality.

“*Local Government.*”—See under sec. 3(c), *ante*.

“*Land.*”—See sec. 3(a).

“*Public purpose.*”—See sec. 3(f), and sec. 6(3), *post*.

“*Collector.*”—See sec. 3(c).

“*Official Gazette.*”—See sec. 6 (2), sec. 42, and sec. 55 (3), *post*.

“*Notification to that effect.*”—There is no provision here, as there is in sec. 6, for the signature of the notification by a competent authority, but this of course would be necessary.

“*Public notice.*”—Presumably this would be signed by the Collector who is directed to issue it, but, strangely enough, sec. 45 provides that it must be signed by the ‘Officer’ mentioned in the next clause, who has no authority to issue it. See sec. 45, *post*. See also under sec. 38(1).

Sub-sec. (2).—This prescribes what may be lawfully done in pursuance of the investigation after the requirements of the previous clause have been fulfilled. When the proposed acquisition is for a Company the provisions of sec. 4 may also be resorted to, but subject to the modifications prescribed by sec. 38, *post*.

• The wilful obstruction of the execution of any of the acts authorized by the section, or the destruction of any of the works executed in pursuance of it is punishable under sec. 46, *post*.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

COMMENTARY.

Cf. Act X of 1870, sec. 5.

"*The officer so authorized.*"—This means authorized to carry out the preliminary investigation under sec. 4. When the land is wanted by a Company it means an officer of such Company (see sec. 38(2)).

"*The Collector.*"—See sec. 3(c).

"*Or other chief revenue-officer.*"—The meaning of this is explained by the Select Committee (see Third Report, cl. 5, *Appx. D*).

Declaration of intended Acquisition.

6. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders :

Declaration that land is required for a public purpose.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

COMMENTARY.

Cf. Act X of 1870, sec. 6 ; Bom. Act IV of 1898, Sch.

Cf. also 8 & 9 Vic., c. 18, s. 18.

This section prescribes the next step in the proceeding, after a decision has been arrived at as to the expediency of the proposed acquisition. That is the declaration of the intention to acquire the land in question. This again is dependent upon two conditions, *viz.*—(a) that the compensation-money is chargeable wholly or partly against public funds or the funds of some Company, and (b) that an official declaration shall be duly published in the Gazette with the necessary particulars. It corresponds with the 'notice to treat' under the Lands Clauses Act, 1845.

Sub-sec. (1).—The intention of the Local Government must be evidenced by the signature of the proper officer.

"*Subject to the provisions of Part VII.*"—This means when the land is wanted for a Company. But even then the object of the acquisition must be for the public benefit (see s. 40, *post*). An inquiry as to this must precede the 'declaration.'

"*Local Government.*"—See under sec. 3(c), *ante*.

"*Land.*"—See sec. 3(a), *ante*.

"*Public purpose.*"—See sec. 3(f).

"*Company.*"—See sec. 3(e), and ss. 38—44, *post*.

"*A declaration to that effect.*"—That is to say intimating the intention of the Government and the purpose, but of course subject to the requirements of sub-sec. (2).

"The law requires that when any particular land is required for the two purposes for which the Local Government is authorised by the Legislature to put the Act into operation, a declaration to that effect should be previously made. It does not require that the intention of Government should be declared or notified in any particular form, nor has it been pointed out to us that any form has been prescribed by the Act or the rules

framed under the Act for such declaration. The use of the words 'to that effect' indicate to our mind that it may be made in any form so long as the object is patent."—*Esra v. Secretary of State* (30 Cal. p. 81). It would be necessary, however, that the declaration, when published, should state the particulars specified in sub-sec. (2).

"*Public revenues.*"—A cantonment fund would come within the meaning of this expression (see Act XX of 1910, s. 22).

"*Wholly or partly.*"—This was intended, as was explained by the Select Committee, to meet the cases in which public institutions are only partly supported out of public revenues (see Third Report, cl. 6, *Appx. D*).

"*Local authority.*"—This means "any municipal committee, district board, body of port-commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund:" see Act XVIII of 1885 (Mines), ss. 16, 17, *post*: see also General Clauses Act (X of 1897), sec. 3(28).

Under the Calcutta Improvement Act of 1911, it includes the Board of Trustees constituted thereunder (see *Appx. A, B, post*).

Sub-sec. (2).—This clause makes it essential that the declaration shall (1) be published in the official Gazette, and (2) set forth certain particulars regarding the land. The particulars to be specified therein are (a) the locality, (b) the purpose of the acquisition, (c) the approximate area, and (d) the place where the plan (if any) may be inspected. These provisions are imperative, and no declaration, it is presumed, would be valid which did not strictly comply with them.

It will be observed, however, that the section nowhere requires the 'boundaries' of the land to be "given in the declaration," as has been suggested in the case of *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. at p. 879); nor would a Collector, it is presumed, "commit an act of trespass" if he failed to observe a rule which had no existence. Moreover, it is difficult to see why the Government should incur the liability of a trespasser for omitting to do something that the law did not require to be done.

"*Official Gazette.*"—See ss. 4(1), 42, 55(3).

Sub-sec. (3).—This clause states in precise terms the effect of a valid declaration. It is conclusive as well as authoritative.

"*The said declaration.*"—That is one which complies with the foregoing provisions.

"*Conclusive evidence.*"—When one fact is declared to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it: Indian Evidence Act (1 of 1872), sec. 4.

It is very desirable that the Local Government should endeavour to avoid issuing different declarations for the acquisition of portions of the same tract of land when the declarations follow each other in rapid succession. The encouragement of piece-meal acquisition results in loss to all the parties concerned, not excluding the Government itself : " *Fink v. Secretary of State* (34 Cal. p. 601).

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration
Collector to take order
for acquisition.

COMMENTARY.

Cf. Act X of 1870, sec. 7.

This section shows very clearly the importance of the declaration, for before that has been published the acquisition cannot proceed, nor can the Collector take action without this order.

In Bengal the Board of Revenue have been duly authorized in this behalf by the Local Government.

"*Land.*"—See sec. 3(a), *ante*.

"*So declared.*"—That is in the manner provided by sec. 6.

"*Public purpose.*"—See sec. 3(f).

"*Company.*"—See sec. 3(e), and ss. 38—44, *post*.

"*Local Government.*"—See under sec. 3(c), *ante*.

"*Collector.*"—See sec. 3(c).

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be

Land to be marked
out, measured and
planned.

measured, and (if no plan has been made thereof) a plan to be made of the same.

COMMENTARY.

Cf. Act. X of 1870, sec. 8.

The importance of this section consists in its prescribing the first acts to be performed by the Collector in the acquisition proceeding. The land proposed to be acquired may have been already marked out under the provisions of sec. 4, and its approximate area ascertained for the purposes of the declaration published under sec. 6, but he must now have it accurately measured and a plan of it made, unless one already exists. These measurements may be questioned by the parties subsequently: see ss. 9(2), 11, and 18, *post*.

The plan would, presumably, set forth the boundaries of the land. If from these it was found that, by some mistake, the land actually acquired was not the same as that described in the plan, the proceeding would be entirely invalid and without jurisdiction: *Gandra Sahu v. Secretary of State* (8 Cal. L. J. 39).

The wilful obstruction of any of these acts is punishable with imprisonment and fine under sec. 46, *post*.

"Collector."—See sec. 3(c), *ante*.

"Land."—This means here the particular plot which is to be acquired. See also sec. 3(a).

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Notice to persons
interested.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in

any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business, and registered under Part III of the Indian Post Office Act, 1866.

COMMENTARY.

Cf. Act X of 1870, sec. 9. *Cf.* also 8 & 9 Vic., c. 18, s. 18.

Section 9 prescribes the next step to be taken by the Collector, and its object is to ascertain who are the persons who are interested in the land. With this view he must issue two notices. The one is a general or 'public notice' to be given in the locality, intimating the fact of the proposed acquisition and inviting claims for compensation from all persons interested in the land. The other is a special or personal notice to be served on the occupant and on all other persons believed to be interested in the land, and to the same effect.

Sub-sec. (1).—*"The Collector."*—See sec. 3(c), *ante*.

"To be given at convenient places on or near the land."—The section does not state that the notice is to be a written one. In fact there is nothing to preclude an intimation by a crier with beat of drum.

"All interests in such land."—See sec. 3(a), (b), *ante*.

"Government."—See under sec. 3(c).

Sub-sec. (2).—The notice is to contain a description of the land and a requisition to all 'persons interested' to put in statements of their respective interests and the extent of their claims, and also their objections (if any) to his measurements under the previous section, within a stated period.

"The particulars of the land so needed."—The nature of these is not specified, but it would be reasonable to expect such details

as would be sufficient to describe the land and the purpose for which it was needed. It would certainly be necessary to identify the land with sufficient detail as to secure the appearance of the persons interested. Perhaps the particulars specified in sec. 6 (2) and sec. 8 would be enough for that purpose.

"Person interested."—See sec. 3(b), *ante*.

"The nature of their interests in the land."—See sec. 3(a).

"The amount of their claims to compensation."—This is an important consideration and the statement should be carefully made, for having regard to the provisions of sec. 25, *post*, the amount cannot afterwards be enhanced. On the other hand if the claim be too extravagant the applicant may be mulcted in costs under sec. 27.

A petition containing a statement of claim under sec. 9 is exempt from court-fee (see Act VII of 1870, sec. 19(22)).

"Not being earlier than fifteen days."—This provision is imperative: *Rameswar Singh v. Secretary of State* (34 Cal. p. 480).

Sub-sec. (3).—This relates to the special notices 'to the same effect' which the Collector must issue on the parties specified, and the service is to be personal, where that is possible. No details are prescribed, and thus a wider discretion is allowed to the Collector, but the object in view is to secure the appearance of claimants.

The notice, however, "must contain the material facts which would enable the land owner to identify the land intended to be taken up. The identification of the thing desired is of the utmost importance, and if the notice does not describe the property against which it is directed, it must be taken to be defective:" *Rameswar Singh v. Secretary of State* (34 Cal. p. 479).

"Persons known or believed to be interested."—As it is only on such persons that the special notice has to be served, it follows that there may be others who are not 'known or believed to be interested', and who cannot therefore be served. In such a case if the non-service were due to mistake or ignorance it would not vitiate the proceeding nor invalidate the absolute title which the Government acquires under sec. 16.

In a case when all "the preliminary steps, including the taking of possession, had been duly taken, with only this exception, that by some mistake the name of the defendant was omitted from the report of the Sub-Deputy Collector, and no special notice was issued

to him, but he had knowledge of the proceedings under the Act, though he did not appear," it was held that there had been a substantial compliance with the provisions of the Act, and that there was no reason for holding that the vesting of the land in the Government under sec. 16 had not taken place: *Ganga Ram Marwari v. Secretary of State* (30 Cal. 576).

"*Entitled to act.*"—See sec. 3(g), *ante*. Other methods of service are provided in sec. 45, *post*.

Sub-sec. (4).—When a notice cannot be served personally it may be sent by post. The Indian Post Office Act (VI of 1898), ss. 28-29, now contains the provisions referred to.

The intentional omission to comply with the Collector's requisition to furnish a statement under sec. 9 is made punishable by sec. 10. There is also a further penalty under sec. 25(2), *post*.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

Power to require and enforce the making of statements as to names and interests.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

COMMENTARY.

Cf. Act X of 1870, sec. 10.

The powers conferred on the Collector by this section may be usefully employed in obtaining information as to the various persons who may have interests in the land, which in many cases it might be difficult to get. It will be observed that a penalty is

imposed for declining to comply with the Collector's demand, but none for delivering a false statement. Nor is the Collector empowered, not being a judicial officer, to administer an oath or compel a statement to be verified.

The expression 'Court' in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector either to administer an oath or require a verification. Nor is a Deputy-Collector acting as a Collector a judicial officer: *Durga Das Rukhit v. Queen-Empress* (27 Cal. 820).

Sub-sec. (1).—The time and place for delivery of the statement should be notified, as in the previous section.

"Collector."—See sec. 3(c), *ante*.

"Any such person."—That is to say the occupier or other person indicated in sec. 9(3), *ante*.

"So far as may be practicable."—No unnecessary burdens are imposed on the informant.

"Any interest in the land."—See sec. 3(a), (b), *ante*.

"The rents and profits for three years."—The period was altered from one year to three, as this was considered to be a fairer test.

Sub-sec. (2).—The clauses of the Indian Penal Code (ss. 175, 176), so far as they can be made applicable, are as follows:—

"S. 175.—Whoever being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."

"S. 176.—Whoever being legally bound to give any notice, or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both."

It will be observed that sec. 177, P. C., is not made applicable by sec. 10, as is erroneously stated in *Durga Das Rukhit v. Umesh Chandra Sen* (27 Cal. at p. 987); so that a person is, apparently, not legally bound to furnish true information, or punishable for omitting to do so.

'There is no provision that any person making a false statement before a Collector would make himself liable for giving false testimony. The only liability is for disobedience of orders:' *Exra v. Secretary of State* (30 Cal. p. 84).

Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

Enquiry and award
by Collector.

(i) the true area of the land ;

(ii) the compensation which in his opinion should be allowed for the land ; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

COMMENTARY.

Cf. Act X of 1870, ss. 11, 14. *Cf.* also Ben. Act V of 1911, s. 2.

This important section deals with the final stage of the Collector's proceedings, *viz.*, his enquiry and 'award.' On the appointed day, that is the day fixed in the notices issued under sec. 9, or on some subsequent date, he is to hold his enquiry. He is to hear the parties, who have appeared pursuant to his notices, investigate their claims, consider their objections, and take statements, in an informal way, for the purpose of ascertaining the value of the land and the nature of the interests involved. At the conclusion of this enquiry, which may be adjourned from time to time (see s. 13), the Collector must make his 'award,' whether all the claimants have appeared or not. The 'award' must be drawn

up under three heads, comprising the matters which have formed the subject of the enquiry. These are (a) the correct area of the land, (b) the amount of compensation which he thinks should be given, and (c) his apportionment of that compensation.

"Throughout the proceedings the Collector acts as the agent of Government for the purposes of acquisition, clothed with certain powers to require the attendance of persons to make statements relevant to the matters which he has to enquire into. He is in no sense of the term a judicial officer, nor is the proceeding before him a judicial proceeding. The award which he makes does not possess any finality, so far as the persons interested are concerned, for under section 18 any person interested, who has not accepted the award, may, within a certain time, by a written application to the Collector, require a reference of the matter for the determination of the Court. This shows that, so far as the Collector is concerned, he is not a Court :'" *Ezra v. Secretary of State* (30 Cal. p. 85).

"The expert official charged with the duty of fixing a value should be possessed of all the information in the hands of the department, and should at the same time avail himself of all that is offered at the enquiry, his ultimate duty being not to conclude the owner by his so-called award, but to fix the sum which in his best judgment is the value and should be offered :'" *per* Lord Robertson in *Ezra v. Secretary of State for India* (32 Cal. at p. 629).

"When once the special Collector under the Act has been appointed by the Local Government, the Act casts upon that Collector the duty not only of initiating the enquiries, but of conducting those enquiries to their lawful end in the award of a particular sum for compensation. As the Privy Council have observed it is the special Collector's business to fix the sum which in his best judgment is the value and should be offered ;' in other words, as the statute enacts, it is the Collector's opinion which is to prevail, not the conflicting opinion imposed on him by another authority acting on other materials :'" *Dosabhai v. Special officer, Salsette* (36 Bom. 599).

"The Collector has no jurisdiction to try questions of title between Government and the claimant. It seems a contradiction in terms to speak of the Collector as seeking acquisition of land when he asserts that the land is his own, and that no other person has any interest in it." In such a case "if the Collector proceeds with the enquiry he is directed to make under the Act that amounts

to a confession of title in the claimant or claimants, and having arrived at the compensation payable for the land under sec. 11 he ought, if he makes an offer at all, to offer that to the claimant; he has no right whatever to retain any of it on behalf of Government." *In re Esufali Salebhai* (10 Bom. L. R. p. 999). And see under sec. 1 (1), *ante*.

"*On the day so fixed.*"—That is fixed by the notices under sec. 9 or sec. 10. And see sec. 13, *post*.

"*The Collector.*"—See sec. 3(c), *ante*.

"*Value of the land.*"—See sec. 3(a).

"*The persons claiming.*"—See sec. 3(b).

"*The true area.*"—This, it is presumed, will have been already ascertained by measurements previously made under sec. 8.

"*The compensation which should be allowed.*"—In determining this the Collector is to be guided by the directions contained in ss. 23, 24, *post*. See sec. 15.

"*The apportionment.*"—No rules are prescribed by the Act for determining questions of apportionment. If the parties agree as to their respective shares the particulars are to be set forth in the 'award' and there is an end of the matter (see s. 29, *post*). If they do not agree the Collector may either decide the question himself under this section or refer it for the decision of the Court under sec. 30, *post*. For the principles of apportionment which have been laid down by the Courts, see under sec. 30.

As to the changes introduced by this section, see Introduction.

A further provision relating to 'costs' is introduced by the Calcutta Improvement Act, 1911 (see *Appx. A & B, post*).

12. (1) Such award shall be filed in the Collector's office and shall, except as herein-after provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

Award of Collector
when to be final.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

COMMENTARY.

Cf. Act X of 1870, sec. 14.

Section 12 provides that the Collector's award when completed is to be filed in his office. It then becomes a public record, and except in certain cases a permanent one. Notice must at once be given of the fact to all 'persons interested,' or their agents, who may not be present and aware of it.

The Collector's 'award' becomes final and conclusive, as between him and the parties, at once, if they accept it. Or, if they omit to claim a reference within the time allowed by sec. 18, then on the expiry of that period.

If the parties are agreed on all the points decided by the 'award' except the method of apportioning the compensation, *i.e.*, if they accept his measurement and his valuation but not his apportionment, the Collector may elect to keep the matter open and refer the 'dispute' to the decision of the Court (see s. 30). In such a case, it is presumed, he would not file his 'award' until he had ascertained the result of the reference and was able to complete his award.

If the parties, or any of them, decline to accept his award, or any part of it, they, or any of them, may claim a reference to the Court under sec. 18, on one and all of the points decided. But in any case the compensation-money must be paid, or, at least, tendered. The rules as to this are provided in Pt. v, ss. 31—34, *post*.

A copy of the 'Collector's award' may be had by any person claiming under it free of charge (see s. 51, *post*). The 'award,' moreover, is not chargeable with stamp-duty.

"There can be no doubt that the Collector's functions are limited to making an offer of the compensation payable for the land. If there are several claimants he can apportion the compensation amongst them, but the offer has to be made to the claimants as a body; there is not a separate offer to each claimant of the amount apportioned to him." *In re Esufali Salebbhai* (10 Bom. L. R. p. 998).

D, AA

Sub-sec. (1).—It is to be observed that the Collector's 'award' is binding on all the persons interested whether they have appeared or not. As to the change in the law in this respect, see Introduction.

"*Except as hereinafter provided.*"—That is to say in Pt. III (ss. 18—28), *post*. There is no other remedy.

"*Final as between the Collector and the persons interested.*"—This means that it is not open to the parties to bring a suit to set aside the award, or, in fact, to contest it in any manner except that provided by the Act itself. Subject to this limitation it is final as between them and him.

But this does not prevent the parties from litigating, say a question of apportionment, among themselves. "The award of the Collector is declared by sec. 12 of the Act to be final except as thereafter provided, only as between the Collector on the one hand and the body of claimants on the other, and not as between the claimants *inter se*. If there is any question raised as between the claimants, that can be determined only by the civil court, and when there has been no reference made, there has been no adjudication of the rights of the claimants *inter se*:" *Srimati Punna-bati Dai v. Raja Pudmanand Singh* (7 C. W. N. p. 541). See also *Bhandi Singh v. Ramadhin Roy* (10 C. W. N. 991).

It is, moreover, clear from the terms of the third proviso to sec. 31 (*post*) that that section contemplates disputes arising among the parties as to apportionment and consequent litigation.

Section 12, however, would be no bar to suits of the kind contemplated in sec. 52, that is to say, suits brought against the Collector for tortious acts committed in the course of his proceedings. Or, again, suits of the kind contemplated by arts. 17 and 18 of the Limitation Act (IX of 1908). These provisions are the same as in the previous Limitation Acts (XV of 1877, and IX of 1871), under which it has been held that a suit would lie against a Collector, who failed to pay the compensation awarded, under sec. 31, for the recovery of the amount, and that art. 17 contemplates such a suit: *Nilkanth v. Collector of Thana* (22 Bom. 802).

A suit is also maintainable when rights have been injuriously affected by the acquisition of land and the Collector refuses to adjudicate upon the claims put forward: *Rameswar Singh v. Secretary of State* (34 Cal. 470). See also *Mantharavadi Venkayya v. Secretary of State* (27 Mad. 535), under sec. 17, *post*. And see also under ss. 31 and 52.

Sub-sec. (2).—It is presumed that this notice must be in writing, as time is to be reckoned from the receipt of it, when a reference is claimed under sec. 18(2) (c), *post*.

As to the various methods provided for serving notices, see sec. 45, *post*.

“Collector.”—See sec. 3(c), *ante*.

“Persons interested.”—See sec. 3(b).

“Immediate notice.”—When a statute requires that something shall be done forthwith, or ‘immediately,’ or even ‘instantly,’ it would probably be understood as allowing a reasonable time for doing it—the test is whether, under the circumstances, there was such unreasonable delay as would be inconsistent with what is meant by ‘immediate.’ *In re the application of Sheshamma* (12 Bom. p. 277).

On the strength of this *dictum* of a Full Bench it has been held that a notice given five days after a Collector had made his award was a sufficient compliance with the section. “The exigencies of official business require that he should have some time before he can give ‘notice’ of his award after he has made it.” *In re Land Acquisition Act* (30 Bom. p. 285). See also under sec. 18(2), *post*.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Adjournment of enquiry.

COMMENTARY.

Cf. Act X of 1870, sec. 12.

The Collector is not bound to adjourn his enquiry merely because a claimant does not appear, for he may hold it *ex parte* (see ss. 11, 12).

“Collector.”—See sec. 3(c), *ante*.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the

Power to summon and enforce attendance of witnesses and production of documents.

same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

COMMENTARY.

Cf. Act X of 1870, sec. 11.

Though the Collector is not a judicial officer he is empowered by this section to exercise certain *quasi* judicial functions. "Although he has the power of summoning witnesses in the same manner as is provided in the case of a civil court, there is no provision that any person making a false statement before him would make himself liable for giving false testimony. So far as we can see, the only liability is for disobedience of orders." *Ezra v. Secretary of State* (30 Cal. p. 84).

"Under the Code of Civil Procedure."—See Act V of 1908, Orders XI, XIII, XVI.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Matters to be considered and neglected.

COMMENTARY.

Cf. Act X of 1870, sec. 13. *Cf.* also Ben. Act V of 1911, s. 3.

"Collector."—See sec. 3(c), *ante*.

"The Collector is to be guided by the provisions of sec. 23 in determining the amount of compensation. By sec. 23, sub-sec. (1), in determining the amount of compensation to be awarded for the land, the Court shall take into consideration first the market-value of the land, to which may be added various other sums for damage and expenses, under headings 'secondly' to 'sixthly' in that sub-section. When there are no claims for compensation under these heads the compensation payable is the market-value of the land." *In re Esufali Salebhai* (10 Bom. L. R. p. 996).

Where a Collector made no enquiry into the value of the land acquired, but arbitrarily fixed the compensation at the nominal consideration of one rupee, it was held by the Privy Council that the provisions of the Act had not been complied with, and that there was no proper award: *Luckmeswar Singh v. Chairman, Darbhanga Municipality* (18 Cal. p. 105).

Taking possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Power to take possession.

COMMENTARY.

Cf. Act X of 1870, sec. 16. *Cf.* also Bom. Act IV of 1898, s. 50.

This and the next sections authorize the Collector to take possession of the land—in ordinary cases under sec. 16, and in cases of urgency under sec. 17. In ordinary cases possession may be taken after the award has been made and filed, and this without regard to whether it has been accepted, provided the compensation-money has been paid or tendered under sec. 31, *post*.

The manner of taking possession is not prescribed, but it is presumed the Collector would enter into occupation, or do something to indicate the fact (s. 47). Obstruction has not been anticipated by any provision such as sec. 46, but possibly the general provisions of ss. 183, 186 of the Penal Code might apply in such a case.

After possession has been taken of any land the Government is not at liberty to withdraw from the acquisition of it (see s. 48). The act of possession is therefore of the highest importance.

"Collector."—See sec. 3(c), *ante*.

"*Vests absolutely in the Government.*"—The immediate effect of possession is to give the Government an absolute title to the land. This title is not affected by the non-service of any special notices (s. 9(3)), through inadvertence or ignorance, on persons claiming an interest: *Ganga Ram Marwari v. Secretary of State* (30 Cal. p. 579).

It will be observed that the title vests in the Government alone, so that when land is acquired for a Company, a fresh transfer must be made of the land to the Company (see s. 41(2), *post*).

Mines and minerals situate in the land will also vest in the Government, unless specially excluded by a declaration under Act XVIII of 1885, sec. 3, *post*.

"*Free from all incumbrances.*"—"Whatever land the Government takes under the Act, it takes it as its absolute property, free from all incumbrances." This includes 'easements of every

kind, such as rights of water, rights of drainage, rights of way and such like, which are all incumbrances within the meaning of the Act. The moment the Government takes possession of the lands these incumbrances as a matter of right instantly cease to exist : *Taylor v. Collector of Purneah* (14 Cal. p. 431).

But when an easement is destroyed by an acquisition the person affected must be compensated for his loss, and he is entitled to rank as a 'person interested' in the land under sec. 9. The Act specially provides for this (sec. 3 (b)).

Leases and mortgages are also incumbrances, and lessees and mortgagees are persons having 'interests in the land,' within the meaning of sec. 9, and are as such entitled to compensation (see sec. 10).

The question as to what is the proper method for a mortgage decree-holder to obtain satisfaction of his debt has been the subject of controversy. The High Court of Allahabad has held that the decree-holder's proper remedy is to apply under sec. 9 of the Act : *Basa Mal v. Tajammal Husain* (16 All. 78). The High Court of Madras has laid down that "the rights of parties to the land, and to any mortgage on, or interest in, it are transferred to the compensation-money." It is to be "considered as money impressed with the trusts and obligations of the immoveable property which it represents." *Viraragava v. Krishnasami* (6 Mad. p. 347).

The High Court of Calcutta has expressed the opinion that "when a mortgaged property is acquired by Government the mortgage-lien probably attaches to the compensation-money." In other words that the decree may be executed by attaching the sum awarded as compensation : *Amar Chandra Kundu v. Ram Sundar Saha* (13 C. W. N. p. 360). Probably both methods are available.

These remarks apply only to mortgages effected before acquisition, that is to say to existing mortgages. If a lease or mortgage were effected after the publication of the declaration under sec. 6, but before possession is taken under sec. 16, the provisions of sec. 24, it is presumed, would apply, if the words "disposal of the land acquired" in the seventh clause of that section are intended to cover such transactions. That is, they would only be valid if executed under the sanction of the Collector. Under the English law they would not be valid at all (see under s. 24, cl. 7, *post*).

But if a mortgage were effected of the property after possession had been taken under sec. 16, it would be void *ab initio*, for the mortgagor would have ceased to have any interest in it, the land having "vested absolutely in Government free of all incumbrances from the date of possession:" *Amar Chandra Kundu v. Ram Sundar Saha (supra)*.

No doubt a contrary view was expressed in *Jotoni Chowdhurani v. Amar Krishna Saha* (13 C. W. N. 350), but there can be little doubt that the decision in that case was based upon a misapprehension of the facts, as was pointed out in the later judgment (at p. 360). In such a case the "so-called mortgagee" could have no lien on the compensation-money, as the property could not be mortgaged at all.

17. (1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

Special powers in cases of urgency.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghât station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at

least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

COMMENTARY.

Cf. Act X of 1870, sec. 17. *Cf.* also Ben. Act V of 1911, s. 4, and Bom. Act IV of 1898, Sch.

Section 17 provides for possession in cases of urgency. If the land which is needed, either for a public purpose or for a Company, be waste or arable, and the Government so directs, the Collector may take possession even before he completes his award. This may be done on the expiry of fifteen days from the publication of the general or public notice mentioned in sec. 9(1), *ante*.

This pre-supposes that the declaration under sec. 6 has been previously published.

Sub-sec. (1).—It will be observed that the nature of the urgency contemplated is not indicated. This is to be determined by the Local Government, and it is therefore doubtful if the question could be raised.

"*Local Government.*"—See under sec. 3(c), *ante*.

"*The Collector.*"—See sec. 3(c).

"*Company.*"—See sec. 3(e).

"*Vest absolutely in the Government.*"—See under sec. 16.

"*Free from all encumbrances.*"—See under sec. 16.

Sub-sec. (2).—This clause provides for another class of cases arising out of a sudden or unforeseen emergency, and possession is not limited to 'waste and arable land', as in the former case. Where the immediate possession of land of any kind is required for railway purposes, the Collector may with the previous sanction of the Local Government, proceed in the same manner to take possession of it. But when there are buildings on the land he must give the occupant at least forty eight hours' notice before entry. (see Third Report, cl. 9, *Appx. D*).

Sub-sec. (3).—In either case compensation must be offered at once for the loss of crops and trees or other damage due to 'sudden dispossession,' and if it be not accepted it must be entered in the award. The object of this provision was, as stated by the Select Committee, "to give special damages for sudden dispossession in order to cover injuries which sudden dispossessions constantly entail" (see Second Report, cl. 13, *Appx. D*).

"*Person interested.*"—See sec. 3(b).

"*Land.*"—See sec. 3(a).

It is to be observed that when the Collector takes possession under sec. 17, *i.e.*, before making his award, he becomes liable to pay interest on the amount under sec. 34, *post*.

Where land had been taken under sec. 17 for railway purposes, and the Collector thereafter refused to make an award on the ground that the land belonged to Government, it was held that the only remedy was by a suit for damages for breach of statutory duty, and that although the land had really belonged to the plaintiff it had vested absolutely in the Government and could not now be recovered. It was held further that, in such a case, the measure of damages would be such compensation as would have been recovered by the plaintiff had the award been duly made: *Mantharavadi Venkayya v. Secretary of State* (27 Mad. 535).

The provisions of sec. 17 may also be employed in the town of Calcutta when any area has been certified by a Magistrate to be unhealthy, but in that case the proceedings are taken by the Magistrate (see Calcutta Municipal Act (III of 1899) sec. 557).

For the changes made in this section by the Calcutta and Bombay Improvement Acts, see *Appx. A & B, post*.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award :

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, subsection (2), or within six months from the date of the Collector's award, whichever period shall first expire.

COMMENTARY.

Cf. Act X of 1870, sec. 15 ; and Ben. Act V of 1911, s. 6.

Cf. also 8 & 9 Vic., c. 18, s. 68.

For the changes made in the law, see Introduction, and Preliminary Report, cl. 6, (*Appx. D*).

This important section affords the only remedy provided by the Act against an improper award by the Collector. Any 'person interested,' who declines to accept it, may, within the period prescribed, claim a Reference to the 'Court,' on any or all of the points decided by the Collector under sec. 11.

* **Sub-sec. (1).**—The application for a Reference must be in writing, and presented to the Collector.

The Court of the Land Acquisition Judge is a court of special jurisdiction, the powers and duties of which are defined by the statute, and there is no foundation for the contention that a court of this description can be legitimately invited to exercise inherent powers, so as to assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it : *British India Steam Navigation Co. v. Secretary of State* (38 Cal. p. 244).

"Section 18 and other sections which follow it make it reasonably plain that the question of the legality or in the propriety of the 'award' of the Collector were not intended by the Legislature to form the subject of enquiry. The reference is obtained by the claimant ; the objections he can urge against the 'award' of the Collector are specified in sub-sec. (1) ; under sec. 20 the Court has to determine the objection ; and under sec. 21 the scope of the enquiry is restricted to a consideration of the interests of the persons affected by the objection." The judge has therefore no power to "remit the 'award' to the Collector for reconsideration, modification, or reduction : " (*Id.* at p. 247).

"This section clearly contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under sec. 9 of the Act, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine : " *Imdad Ali Khan v. Collector of Farakhabad* (7 All. p. 818).

"It is the duty of the Judge, in apportioning compensation-money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money : " *per Pontifex, J.*, in *Nobodeep Chunder Chowdhry v. Brojendro Lall Roy* (7 Cal. p. 407). See also under sec. 30, *post*.

"Whenever a question of title arises between rival claimants, it must, under the terms of the Act, be decided in the case, and cannot be made the subject of a separate suit : " *Babujan v. Secretary of State* (4 Cal. L. J. p. 258). See also *Harrish Chandra Chatterji v. Bhoba Tarini Debi* (8 C. W. N. 321).

"Any person interested."—See sec. 3(b), *ante*. This would not include a 'local authority' or a 'company' (see s. 50 (2), *post*) : *Municipal Corporation of Pabna v. Jogendra Narain Raihat* (13 C. W. N. 116).

Where a person "claimed an interest in the compensation-money, and the Collector thought he was a person who could come in as claiming an interest," it was held that these facts were sufficient to entitle him to ask for a reference, and to appear in support of it : *Galstaun v. Secretary of State* (10 C. W. N. p. 198).

"A person having a claim as landlord conflicting with the claim of the person to whom the compensation has been awarded is entitled under sec. 18 to come in and ask the Collector to make a reference to the Civil Court, and the Civil Court has jurisdiction to decide such a case : " *Rani Hemanta Kumari Debi v. Hari Charan Guha* (5 Cal. L. J. p. 304).

The term would not include the Government : *Imdad Ali Khan v. Collector of Farakhabad* (7 All. 817) : *Crown Brewery v. Collector of Dehra Dun* (19 All. 339) : *British India Steam Navigation Co. v. Secretary of State* (38 Cal. p. 246).

"Who has not accepted the award."—Accepting compensation-money, except under protest, would be equivalent to accepting the award. No one who had done so would be entitled to apply under sec. 18 (see sec. 31(2), pro. 2, *post*).

A person who raises no objection to a Collector's apportionment of compensation must be taken to have accepted the award in that respect : *Abu Bakar v. Peary Mohan Mukerjee* (34 Cal. 451).

"By the Collector for the determination of the Court."—See sec. 3(c), (d), *ante*. Exception may be taken to (a) the measurement, (b) the amount of the compensation, and (c) the distribution or apportionment, or to any one of these matters. The last item was added by the Select Committee (see Third Report, cl. 10, *Appx. D*).

"It rests with the Court to determine the compensation to be awarded, and for that purpose the Judge is in no way bound by the award, but he should consider and weigh the evidence on which it has been based in the same way as he considers and weighs the other evidence in the case, and should then come to a conclusion. The whole case is referred, not merely the objection, for determination, and the provisions of the Act clearly indicate that the award itself is only important in the trial of the reference in determining the question of costs : " *Hughli Mills Co. v. Secretary of State* (12 Cal. L. J. p. 493). See also *Gangadara Sastri v. Deputy Collector of Madras* (22 Mad. L. J. 379).

"*The persons to whom it is payable.*"—See sec. 3(b), *ante*.

"*Apportionment of the compensation.*"—No rules are prescribed by the Act for the determination of questions of apportionment. For the general principles, as laid down by the Courts, see under sec. 30, *post*.

Sub-sec. (2).—The grounds of objection must be set out in the petition. The period of limitation varies according as the parties were present or not when the award was made.

"*Whichever period shall first expire.*"—"These words show that the element of notice is an essential ingredient of the two alternative periods, and such notice may be 'immediate' or not." *In re Land Acquisition Act* (30 Bom. pp. 283-4).

The conditions imposed by sec. 18 must be strictly observed, for on their observance depends the right of a party to have a Reference, the power of the Collector to make one, and the jurisdiction of the Court to entertain it: *Id.* (p. 705).

"Whenever jurisdiction is given to a Court by an Act of Parliament or by a Regulation in India, and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise." *Nusserwanjee Pestonjee v. Meer Mynooddeen Khan, etc.* (6 Moore I. A. p. 155).

"When statutory rights of an exceptional character have been created, the conditions prescribed by the statute for the exercise of such rights must be strictly fulfilled, and if an attempt is made at a mere nominal compliance with the provisions of the statute in the exercise of such rights, the Courts are not powerless to afford relief to a person who is aggrieved by the adoption of such a course. The object of the reference under sec. 18 of the Act is to secure the judicial ascertainment of the value of the property acquired, and other matters strictly incidental thereto." *Rogunath Das v. Collector of Dacca* (11 Cal. L. J. pp. 614-615).

The stating of the grounds of objection to the Collector's 'award,' is one of the conditions precedent to the obligation of the Collector to make the reference: *In re Rustomji Jijibhai* (30 Bom. p. 345).

Objections as to measurement of the land or the amount of compensation are triable exclusively in a Reference under sec. 18, but an objection as to apportionment may be determined either in the Reference or, by virtue of sec. 31 (2), pro. 3, in a civil suit between the 'persons interested.' When, however, a party has once availed himself of a Reference, he cannot again ask for an opportunity to litigate the same matter in a Civil Court. Where certain parties objected to an award on the ground of apportionment, and obtained a Reference under sec. 18, but failed to appear at the hearing, and the same was struck off, it was held that, by the operation of sec. 53 coupled with sec. 647 (s. 141), C. P. C., they were precluded by ss. 102, 103 (O. 1x, R. 8, 9) C. P. C. from bringing a fresh suit to determine the same matter: *Bhandi Singh v. Ramadhin Roy* (10 C. W. N. 991). See sec. 53, *post*.

An adjudication as to the right of persons claiming compensation concludes the question between the same parties, in similar adjudications under the Act: *Chowakaran Makki v. Vayyapprath Kunhi Kutti Ali* (29 Mad. 173).

Where a Judge, in deciding a question of apportionment under the Act, expressly refrained from trying any questions of title, which were therefore not heard and determined, his judgment, it was held, could not "have the effect of *res judicata* upon the title of the parties:" *per* Field, J., in *Nobodeep Chunder Chowdhry v. Brojendro Lall Roy* (7 Cal. p. 409).

"Speaking for myself, I should be extremely reluctant to hold that any decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property:" *per* Pontifex, J., *Id.* (p. 408).

This view has been adopted in *Mahadevi v. Neelamani* (20 Mad. p. 272), and in *Dirgaj Deo v. Kali Charan Singh* (34 Cal. p. 468).

The ratio of this opinion appears to have been that a judge when determining the apportionment of compensation would merely try questions of title incidentally. Field, J., on the other hand, leant to a contrary opinion, and expressly refrained from giving a decision on the point, as it did not arise in the case.

It seems to be quite clear that the Collector has no authority to make a Reference to the 'Court' except at the instance of a party, and in the circumstances mentioned in sec. 18 (see Preliminary Report, cl. 6. *Abbz. D*).

The only matter which he can refer of his own accord for the decision of the 'Court' is a dispute regarding apportionment under sec. 30, and that must be done, it is presumed, before he completes his award. But even if he had done so, he would, it seems, have to refer it again, if he were required to make a Reference under sec. 18 by any of the 'persons interested': *Fink v. Secretary of State* (34 Cal. p. 606), see under sec. 21, *post*.

The Collector has no power to make a Reference to the District Judge in cases in which he claims the land in question on behalf of Government or the Municipality and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such Reference: *Indad Ali Khan v. Collector of Farakhabad* (7 All. 817); and see also *Crown Brewery, Mussoorie v. Collector of Dehra Dun* (19 All. 339).

But where a Municipality claims only a restricted right in the land, and not a full proprietary interest, there is nothing to prevent the Government from acquiring it in the usual way, and then dealing with it in any manner it chooses. In such a case a Municipality could demand a Reference to the Court to have a question of apportionment determined by it: *Babuian v. Secretary of State* (4 Cal. L. J. p. 258).

"There is nothing in the Act which excludes from its operation cases where Government hold some interest in the land to be acquired, while the extreme frequency of such cases forbids the theory that it was omitted *per incuriam*. In other words, Government are not debarred from acquiring and paying for only the outstanding interests, merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market-value of the whole land must be distributed among the claimants:" *In re the Land Acquisition Act—Government of Bombay v. Esufali Salebhai* (34 Bom. p. 636).

If a Collector refuses to make a Reference under sec. 18, his order is open to revision by the High Court under sec. 622 (115), C. P. C., and if he has refused on insufficient grounds to make a Reference he may be directed to make it: *Administrator-General of Bengal v. Land Acquisition Collector* (12 C. W. N. 241).

A Collector although not a judicial officer, yet in this respect acts judicially within the meaning of sec. 115, C. P. C. (1d).

19. (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

Collector's statement
to the Court.

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

COMMENTARY.

Cf. Act X of 1870, sec. 18. *Cf.* also Ben. Act V of 1911, Sch.

This section sets forth in plain terms what particulars must be stated by the Collector in his Reference, for the information of the 'Court,' but he is not by any means limited to these. The 'award' itself, it is presumed, as well as the application with its grounds of objection, would accompany the Reference, so that the 'Court' would be fully apprised of all the material facts, and the contentions of the parties.

"Collector."—See sec. 3(c), *ante*.

"Court."—See sec. 3(d).

Cl. (a).—There must be, first of all, a proper description of the 'land,' showing its situation and extent, with such other details as are necessary to indicate its character. The plan and measurements made under sec. 8 would be comprised in this.

"Trees, buildings or standing crops."—These are 'things attached to the earth,' and would be included in the 'land' (sec. 3(a)), but would have to be taken into account in assessing

the compensation. If the land had been occupied on an emergency, the Collector would have dealt with the trees and crops under sec. 17 (3). Or if they had come into existence since the publication of the declaration under sec. 6, they would be separately assessed under sec. 23 (3).

But they must be included in any estimate of the market-value of the land on which they grow, and which is sought to be acquired: *Sub-Collector of Godavari v. Seragam Subraroyadu* (30 Mad. 151).

It is therefore very necessary that they should be set out "for the information of the Court," to assist him in making his award. It has been held that where land is acquired for building purposes the proper value of trees growing thereon, would be their value as timber, after they had been cut down: see *per* Maclean, C. J., in *Secretary of State v. Duma Lal Shaw* (13 C. W. N. 487). Such a doctrine, it is to be feared, if put in practice, might entail great hardship. Fruit trees, for example, would have very little value as timber, and if compensation were to be assessed on this principle, the owner would suffer a serious loss.

Cl. (b).—This would apparently include persons who had not appeared before him.

"Persons interested."—See ss. 3 (b), 9(3), 10, *ante*.

Cl. (c).—Damages paid under sec. 5 are concluded by the Collector's decision, but those under sec. 17, if tendered but not accepted, are to be included in the award, and can be modified.

"The amount of compensation awarded."—The main feature of the award is the valuation of the land (see s. 11).

Cl. (d).—The grounds may not have been stated in the 'award,' but must be stated in the Reference. Where the provisions of this clause had not been complied with, and there were no materials from which the High Court could ascertain the footing upon which the compensation had been awarded, the case was remanded for the defect to be remedied. "I consider that clause a most salutary provision of the law of land acquisition, because, by requiring the Collector to state in the reference to the Court the grounds on which the amount of compensation was determined, it operates as a safeguard against any arbitrary award being made:" *per* Banerjee, J., in *Madhusudan Das v. Collector of Cuttack* (6 C. W. N. p. 408).

"Instances are not uncommon where the Collector has not given the grounds on which the amount of the compensation was determined by him, and the legal result of his failure to comply with the provisions of cl. (d) is to make it incumbent on the Collector to justify before the special Judge an award which is a mere *brutum fulmen*:" *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. p. 877). And see also *Luchmeswar Singh v. Chairman, Darbhanga Municipality* (18 Cal. 99).

It will be observed that the grounds of apportionment are not required to be stated, though that may also be questioned under sec. 18(1). This, it is presumed, means either that the award will sufficiently indicate what they are, or that a reference has been previously made under sec. 30, in which the grounds have been stated

Sub-sec. (2).—This clause was added by the Select Committee with a view to insure the submission by the Collector of an accurate and complete descriptive list of all the relevant papers which may be required by the 'Court' (see Third Report, cl. 11, *Appx. D*).

"The Collector should try to consolidate claims to compensation as far as possible:" *Fink v. Secretary of State* (34 Cal. p. 601).

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

Service of notice.

- (a) the applicant ;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and,
- (c) if the objection is in regard to the area of the land or the amount of the compensation, the Collector.

COMMENTARY.

Cf. Act X of 1870, sec. 19. Cf. also Ben. Act V of 1911, sch.

On receiving the Reference from the Collector the 'Court' must appoint a day of hearing, and give notice of the same to (a) the applicant, (b) the other claimants who have not accepted the award, and (c) under certain circumstances, to the Collector also, directing their appearance.

"Court."—See sec. 3(d), *ante*.

"Determine the objection."—"The special Judge must decide according to the weight of evidence, irrespective of the question of *onus probandi*, and without throwing on the claimant an undue share of it." *Fink v. Secretary of State* (34 Cal. p. 606).

"The Court would be slow to differ from the Collector's offer over a matter of a few rupees except for very strong reasons; such as an error on a question of principle. In this reference I am satisfied that the Collector has offered the full market-value of the land, and I dismiss the reference with costs." *per* Macleod, J., in *In re Government of Bombay v. Karim Tar Mahomed* (33 Bom. p. 330).

Cl. (a).—"The applicant."—There may, of course, be one or more, and their grounds of objection might be the same or different.

Cl. (b).—"Persons interested in the objection."—If the objection were as to the apportionment of the compensation, it is clear that there might be persons who had accepted their share of the compensation without protest, but yet were interested in the objection made by others if it involved a redistribution which might prove adverse to their interests. But, as the clause stands, they would be entitled to a notice in the latter capacity, though not in the former. It is to be observed, however, that the section does not debar such a person from appearing at the hearing, even without a notice, and claiming that his interests are 'affected by the objection' (see s. 21). See also sec. 3(b), *ante*.

Cl. (c).—On receipt of a notice under sec. 20(c) the Collector must enter appearance. "The duty of the Collector in such cases is pointed out in clear terms in Rule 45, which provides that when a reference to the Court has been made by the Collector under section 18 on the ground of an objection to the measurement of the land, or to the amount of the compensation, the Collector should defend the case exactly as he would a Government suit. It is the duty of the Collector to see that evidence is forthcoming to show the fairness of the amount which he has given as compensation. The Collector must remember that the Court will decide

on the evidence before it what amount of compensation should be given, and he must therefore be prepared with reliable evidence at the trial :” *Ezra v. Secretary of State* (30 Cal. p. 89).

“ In a proceeding for the ascertainment of compensation, on a reference under sec. 18, the claimant is to be regarded as the plaintiff and the Government as defendant. No proceeding can properly go on in the absence of the Secretary of State :” *Municipal Corporation of Pabna v. Jogendra Narain Raikut* (13 C. W. N. 116).

“ *Land.*”—See sec. 3(a), *ante*.

“ *Collector.*”—See sec. 3(c).

As to the methods for serving notices, see sec. 45, *post*.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Restriction on scope of proceedings.

COMMENTARY.

The object of this provision is obviously to confine the Judge's inquiry within prescribed limits. In considering the ‘objection’ which has occasioned the Reference, the scope of his inquiry is restricted to ‘the interests affected by the objection.’ There seems to be no reason, therefore, why in deciding questions of apportionment, he should not consider the interests of persons who claim to be affected by the objection, whether they have previously appeared and consented to receive payment of compensation or not. It seems reasonable that their interests should be considered, at least so far as they are affected by the objection.

It has been held, however, that the inquiry must be strictly limited, and that no new points can be raised outside the scope of the main objection : *per* Maclean, C. J., in *Abu Bakar v. Peary Mohan Mukerjee* (34 Cal. 451). See also *Gobinda Kumar Roy Chowdhury v. Debendra Kumar Roy Chowdhury* (12 C. W. N. 98) ; *Mahammad Safi v. Haran Chandra Mukerjee* (12 C. W. N. 985) ; *Prabal Chandra Mukerjee v. Raja Peary Mohun Mookerjee* (12 C. W. N. 987) : *British India Steam Navigation Co. v. Secretary of State* (38 Cal. 230).

In a later case, while it was conceded that ordinarily a Court is "restricted to an examination of the question which has been referred by the Collector for decision," and that the "scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference," the rule was relaxed in favour of a party whose interests were affected by the claim set up by the party who had obtained the Reference, although he had neglected, in the first instance, to put forward a claim himself: *Bejoy Chand Mahatap v. Muzumdar* (13 Cal. L. J. 159).

The rule was also relaxed in another case under the following circumstances. A 'declaration' under sec. 6 was published with respect to certain property sought to be acquired, and, while the acquisition proceedings were pending before the Collector, the estate which comprised the property in question was sold for arrears of revenue, and purchased by a stranger. But before the sale was confirmed the Collector took possession of the property under sec. 16, and the land, accordingly, vested absolutely in the Government. Under this extraordinary position of affairs it was held that the purchaser at the revenue-sale was entitled to be made a party to the Reference obtained by the owner, although limited to the same objections. But in view of these facts, which are set forth in the judgment, it is difficult to see, even if a revenue-sale could take place after the 'declaration,' how the so-called purchaser could acquire any title to a property which had already vested absolutely in the Government, or what interest he could have in a reference to which he was a total stranger.

If, moreover, in view of the provisions of sec. 24, cl. 7, and the authorities, a proprietor is restricted from dealing with the property after the date of the 'declaration,' it is difficult to see why he should be held liable for the Government revenue, or be exposed to the risk of losing both his property and the right to compensation. It might happen that an owner of land was unable to meet the demand except by mortgaging the property, and if he were prohibited by the Collector from doing so, he would lose his estate. The case referred to is *Promotha Nath Mitra v. Rakhal Das Addy* (11 Cal. L. J. 420). See also under ss. 16 and 24(7).

On the other hand it has been held in Bombay that, although sec. 18(2) of the Act requires the grounds of objection to the

Collector's award to be stated in the application, such requirement is only one of the conditions precedent to his obligation to make the reference. There is no provision in the Act which expressly lays down, as sec. 542 (O. XLI, R. 2), C. P. C., does, that the claimant shall be confined to those grounds by the Court which determines the objection. In the absence of such a provision, it was held that a claimant might, by virtue of sec. 53 of the Act, invoke the aid of sec. 147 (O. XIV, R. 3), C. P. C., for the determination of issues in which he was interested: *In re Land Acquisition Act—In re Rustomji Jijibhai* (30 Bom. pp. 345-7).

"Section 21 of the Act authorises the Judge to confine his enquiry into valuation to the interests of the persons affected by the reference under section 18, but the section must mean the admitted interests. If there be any dispute as to the relative value of such interests the total amount of compensation paid may be the subject of a case for apportionment, and the Judge should determine the total amount payable for the land, leaving the question of apportionment to be decided in a separate proceeding, to be asked for by any of the parties. The determination of the value of an individual interest, as contemplated in section 21, exclusive of the interests of other claimants to compensation, is possible only in a case where such interest is incapable of variation, in a proceeding for apportionment:" *Fink v. Secretary of State* (34 Cal. p. 606). But see also *Babujan v. Secretary of State* (4 Cal. L. J. 256).

"Claimant must include a body of claimants, in whom are vested all the lesser interests which make up the permanent interest in the land to be acquired:" *In re Esufali Salebhai* (10 Bom. L. R. p. 999).

"What has to be acquired in every case is the aggregate of rights in the land, and not merely some subsidiary right, such as that of a tenant:" *Babujan v. Secretary of State* (4 Cal. L. J. p. 258).

The Judge should try to consolidate claims to compensation as far as possible. The encouragement of piece-meal acquisition results in loss to all the parties concerned, not excluding the Government itself:" *Fink v. Secretary of State* (34 Cal. at p. 601).

He has the power to do this of his own motion: *In re Dorabji Cursetji* (10 Bom. L. R. 675).

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Proceedings to be in
open Court.

COMMENTARY.

Cf. Act X of 1870, sec. 23.

The hearing of a Reference before the Judge, unlike the Collector's enquiry under sec. 11, is a judicial proceeding, and is regulated by the provisions of the Code of Civil Procedure (see sec. 53, *post*).

"When a reference is made to the Civil Court the claimant is to be regarded as the plaintiff and the Government as defendant. This is the invariable practice : " *Ezra v. Secretary of State* (30 Cal. p. 89).

"The claimant must, on a reference under section 18 of the Act, begin and thus start a case, showing that the Collector's award should not be accepted : " *Fink v. Secretary of State* (34 Cal. p. 605).

"The ordinary rule of *onus probandi* in these cases is that the claimant (who is a plaintiff) must prove that the valuation made by the Collector is insufficient. He may take evidence and come to a conclusion on such evidence. The award under sec. 11 of the Act becomes final if it is not challenged within a definite time before the tribunal of the special Judge. The burden of proof is thus ordinarily on the claimant in the Court of the special Judge, but the burden must vary according to the nature of the enquiry made by the Collector, and if no reasons have been given in his decision to support his conclusion, the claimant has a very light burden to discharge : " *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. p. 877).

"If the burden of proof lies on the claimant, that can be so only by reason of the Collector's award being *prima facie* evidence of the amount awarded being the proper amount, a view which can be justified only if the Collector's reference shows the grounds on which the compensation was determined by him : " *Madhusudan Das v. Collector of Cuttack* (6 C. W. N. p. 408).

"The special Judge must decide according to the weight of evidence, irrespective of the question of *onus probandi*, and without throwing on the claimant an undue share of it : " *Fink v. Secretary of State* (34 Cal. 599).

"Court."—See sec. 3(d), *ante*.

"Appear, plead and act."—That is act as a legal practitioner, not in the sense used in sec. 3(g).

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation.

COMMENTARY.

Cf. Act X of 1870, sec. 24. *Cf.* also Ben. Act V of 1911, sch., and Bom. Act IV of 1898, sch.

This and the next section of the Act may be said to comprise, in a condensed form, the main principles of the law of compensation, as applicable to India. They were first introduced into the Indian Statute-book in 1870, and occupied a place in the Land Acquisition Act of that year (ss. 24, 25). Prior to that there were no rules in existence for the guidance of tribunals.

Sir John Strachey, speaking in Council, in 1869, said—
 "The existing law contained nothing whatever to show the principles on which the valuation of land taken up for public purposes ought to be regulated." "In determining what these principles were to be," he continued, "it seemed to the Government that it could not do better than base its legislation on the principles which had long been established and acted on in England" (see Introduction).

The principles then formulated by the Legislature for the Act of 1870 have been transferred, with a few additions, to the present Act (ss. 23—24).

"These principles, which may be said to govern the whole law of compensation, may be conveniently considered under two headings, namely, (1) when land is purchased or taken, and (2) when no land is taken, but land is injuriously affected. There is no clear principle by which an injurious affection can be distinguished from a taking, but different rules for assessing compensation are applicable to the two classes, and the determination of the class into which a particular loss or injury may fall depends upon the terms of the statute authorising the Act which causes the injury. The loss or injury must in both classes be suffered by persons having interests in lands, otherwise they have

no right to compensation, and they are so entitled only when there is a physical interference with their rights:" Lord Halsbury's 'Laws of England,' Vol. VI, p. 32.

"It is well-known law that under these statutes a party must make one claim for damages, once and for all, for all damages that can reasonably be foreseen, and have one inquiry and one compensation:" *per Erle, C. J.*, in *Chamberlain v. West End of London and Crystal Palace Railway Co.* (32 L. J., Q. B., at p. 178).

"There is no provision whatever for any other than one single inquiry. The statute provides that compensation in respect of land taken, and in respect of land injuriously affected, shall once and for all be settled; and there is no provision whatever for any future damage presenting itself, not contemplated by the parties at the time of compensation:" *per Cockburn, C. J.*, in *Croft v. London and North-Western Railway Co.* (32 L. J., Q. B., at p. 119). See also *Tapidas v. B. B. & C. I. Railway Co.* (6 Bom. H. C., A. C., 116).

The same principle has more recently been laid down by the House of Lords. In a case where a second claim for compensation was put forward by a lessee after the owner had been duly compensated, it was held that the subsequent claim was untenable.

"I cannot entertain the least doubt in the world that any compensation that he might have claimed he was bound to claim then and there, taking it upon the hypothesis that it was tried before a compensation tribunal." And again, "It would be a most monstrous thing to suppose, after the railway company had given compensation, not only for the land that was taken, but for all injurious affection at the time that the notice to treat was served, that they should be called upon to pay further and other compensation to some one else:" *per Lord Halsbury, L. C.*, in *Mercer v. Liverpool, St. Helen's and South Lancashire Railway* ([1904] A. C. pp. 463—5).

"By sec. 23, sub-sec. (1), in determining the amount of compensation to be awarded for the land, the Court shall take into consideration first the market-value of the land, to which may be added various other sums for damage and expenses, under headings 'secondly' to 'sixthly,' in that sub-section. When there are no claims for compensation under these heads, the compensation payable is the market-value of the land:" *In re Esufali Sahebhai* (10 Bom. L. R. p. 996).

Although the rules framed by this Act (ss. 23—24) are intended primarily for the guidance of the 'Court' or Judge, on a Reference, they are equally applicable for the guidance of a 'Collector' when framing his award (see s.c. 15).

"*Court*."—See sec. 3 (d), *ante*.

"*Land*."—See sec. 3 (a).

Sub-sec. (1).—There are six matters which must be taken into account in assessing compensation.

First, the market-value of the land at the date of the publication of the declaration relating thereto under section 6 ;

COMMENTARY.

Cf. Act X of 1870, sec. 24 (1). *Cf.* also 8 & 9 Vic., c. 18, ss. 49, 63.

"*The market-value of the land*."—That is to say its market-price, or, in other words, "the price which a willing vendor might be expected to obtain in the open market from a willing purchaser."

It will be observed that the Legislature has not defined the term 'market-value.' This was advisedly done, as the Select Committee very clearly explained on more than one occasion. "We have again considered," they said, "the question of a definition of the term 'market-value,' but we adhere to the opinion of our Preliminary Report that it is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it ; the decisions of the several High Courts are at one in giving it the reasonable meaning of 'the price a willing buyer would give to a willing seller'" (see Second Report, cl. 14, *Appx. D*).

"The market-value of land may be roughly described as the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land : " *per* Jenkins, C. J., in *Kailas Chandra v. Secretary of State* (17 Cal. L. J., at p. 35).

"The market-value of land means simply the price which, at the given time and place, the land would fetch on sale according to the then existing rates of the market. And this value depends on general pre-existing considerations apart from the individual projects of a particular purchaser : " *Government of Bombay v. Merwanji Muncherji* (10 Bom. L. R. p. 912).

"It was the intention of the legislature that full compensation should be given in all cases where lands are taken under the powers of the Act for the purposes of a public undertaking": *per* Lord Macnaghten in *Cowper Essex v. Local Board for Acton* (L. R. 14 App. Cas. p. 176).

"Where Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it:" *per* Garth, C. J., in *Premchand Burrell v. Collector of Calcutta* (2 Cal. p. 106).

"The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the lands he gives up their equivalent, *i.e.*, that which they were worth to him in money. But the equivalent is estimated on the value to him, and not on the value to the purchaser, and hence it has from the first been recognised as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market-value of his lands as they stood before the scheme was authorized by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands, and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him:" *per* Lord Moulton, in *Lucas and Chesterfield Gas and Water Board, In re* ([1919] 1 K. B. p. 29.)

"When Parliament gives compulsory powers and provides that compensation shall be made to the person from whom property is taken, for the loss that he sustains, it is intended that he shall be compensated to the extent of his loss, and that his loss shall be tested by what was the value of the thing to him, not by what will be its value to the person acquiring it:" *per* Cockburn, C. J., in *Stebbing v. Metropolitan Board of Works* (L. R. 6 Q. B. p. 42).

In commenting on this passage the Bombay High Court have observed—"This involves the question whether there is any difference between the 'value to the owner,' which forms the basis of the compensation payable under the Lands Clauses Act, and the 'market-value' of the land under sec. 23 of the Land Acquisition Act. Mr. Beverley, in his commentary on the Act (6th Ed., p. 47).

considers that though the term 'market-value' is the 'converse of what the law in England contemplates, yet it has been interpreted according to principles very similar to those laid down in English law.' The value to the owner is what he can realise from a purchaser, while the market-value is what a purchaser will give the owner, so that we can see no substantial difference between the two terms: *Government of Bombay v. Merwanji Muncherji* (10 Bom. L. R. p. 918). It is certainly difficult to see how the one term can be the converse of the other.

"The measure of compensation is not what the person, who takes will gain by taking it, but what the person from whom it is taken will lose by having it taken from him, or, in other words, the owner is only entitled to receive for the lands he gives up their proper equivalent, and this equivalent is estimated not on the value to the purchaser, but on the value to the owner." *Wernicke v. Secretary of State* (13 C. W. N. 1046).

"What the jury have to ascertain is the value of the land. In treating of that value, the value under the circumstances to the person who is compelled to sell (because the statute compels him to do so) may be naturally and properly and justly taken into account; but in strictness the thing which is to be ascertained is the price to be paid for the land—that land with all the potentialities of it, with all the actual use of it by the person who holds it, is to be considered by those who have to assess the compensation:" *per Lord Halsbury, L. C., in Commissioners v. Glasgow and South Western Railway Co.* (L. R. 12 App. Cas. p. 321).

In precisely similar language has the term 'market-value' been defined in this country. "By that is meant the price which would be obtainable in the market for that concrete parcel of land with its particular advantages and its particular drawbacks:" *Bombay Improvement Trust v. Jalbhoy* (33 Bom. p. 496).

And again, "The value of the land to the owner is what must be regarded, and that is the price which it will fetch, if disposed of on the most profitable terms:" *Bombay Improvement Trust v. Karsondas* (33 Bom. 28).

There seems to be, therefore, no real difference between the two terms. However, in 1894, an effort was made to get the one term substituted for the other. It was contended that there were things, such as temples, and property of that kind, which had no market-value, and that it would be difficult to compensate the owner of such property, except upon

the 'reinstatement principle' (see *post*). It was urged further that the term employed in the English Act was 'value,' which meant value to the owner.

While this was freely admitted, it was contended on the other hand by the mover of the Bill that in the only case on record where a temple had been taken, it had been taken solely for the purpose of preserving it, so that no harm was done by acquiring it (see 16 Mad. 369, *post*). But of course if the temple had been destroyed it would have been different.

A case, however, was mentioned by another member in which a temple was acquired not for preservation, but for submersion in a large reservoir. The method adopted in the particular case by the Hon'ble member himself was explained by him as follows: "I simply ascertained," he said, "by inquiry what the cost of erecting the temple had been, I also was able to assess with perfect ease the value of the land on which the temple stood, and I was permitted to place in deposit at the treasury, to be paid on the call of the village-headmen, the sum of money which I had awarded. In due course of time they purchased another site, the temple was removed, and a new temple set up where it was required." This was in fact the 'reinstatement principle' (*post*). The amendment was negatived (see Introduction).

In view of the ample definitions of the term 'market-value' cited above, as enunciated by the Indian High Courts, there seems to be little justification for the remark that no 'concise statement of it is to be found in any of the judicial decisions in this country,' nor any need for a resort to American law for a definition: see *Wernicke v. Secretary of State* (13 C. W. N. at p. 1049).

RECOGNIZED METHODS OF VALUATION.

"The cases of valuation of land acquired under Act I of 1894 for public purposes, or the purposes of Companies, may be classified under three heads:—

- (1) the opinion of valuers or experts ;
- (2) the price paid, within a reasonable time, in *bonâ fide* transactions of purchase of the lands acquired, or of the lands adjacent to the land acquired and possessing similar advantages ;
- (3) a number of years' purchase of the actual, or immediately prospective, profit from the lands acquired.

It is generally necessary to take two or all of these methods of valuation, in order to arrive at a fairly correct valuation. Exact valuation is practically impossible, the approximate market-value is all that can be aimed at : " *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. p. 876).

The same rules have been laid down by Farran, J., in the case of *Munji Khelsey*, in almost the same terms, as follows :—

" The recognized modes are :

(1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation, etc., to determine the value of that taken ;

(2) to ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income, according to the nature of the property ;

(3) to find out the prices at which lands in the vicinity have been sold and purchased, and, making all due allowance for situation, to deduce from such sales the price which the land in question would probably fetch if offered for sale to the public : " *In the matter of the Land Acquisition Act, Munji Khelsey* (15 Bom. p. 282).

(1) **By Evidence of Experts.**—" Estimates are undoubtedly some evidence, but their value is not great, as expert opinion is liable to err, and it is not safe to place much reliance on this kind of evidence unless it is supported by, or coincides with, other evidence : " *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. p. 877).

" Land is not like ordinary goods, the value of which can be fixed in inspection by a person who has knowledge of them. Its value is the result of various factors working in different ways and degrees, and they cannot be apprehended and estimated aright off-hand. The advantage of experience in the valuation of land lies in this, that the expert knows what factors should be considered, what information he should seek for, where he should seek it, and how he should test it and apply it. But experience does not enable one to dispense with enquiry, and an honest and useful valuation cannot be made simply by visiting the land and picking up orally some casual and untested information or gossip which may be interested or one-sided : " *Rajendra Nath Banerjee v. Secretary of State* (32 Cal. p. 346).

"The opinion of an expert witness is admissible in evidence not only when it rests on the personal observation and inquiry of the witness himself or on facts within his own knowledge, but also when it is founded on the case as proved by other witnesses at the trial; and, under sec. 51 of the Evidence Act, when the opinion is admissible, the grounds upon which it is based are also admissible. But we understand it to be settled law that an expert may not be asked purely speculative, hypothetical, questions having no foundation in the evidence. In other words, before the expert witness is entitled to give evidence on the hypothesis, a sufficient foundation for it must be laid by evidence *aliunde* of the facts assumed." *Government of Bombay v. Merwanji Muncherji* (10 Bom. L. R. p. 913).

"It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion, which being more or less conjectural are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity." *Secretary of State v. Charlesworth, Pilling & Co.* (L. R. 28 I. A. p. 139).

"In addition to the evidence of sales the Court can be guided by the evidence of surveyors. It is necessary however to distinguish opinion from argument. A surveyor's opinion by itself is good evidence. What value the Court will put on it depends entirely on the effect of the cross-examination, but there is no reason why the witness should himself provide the material for his cross-examination. It will save the time of the Court if a surveyor prepares a concise description of the property to be valued, but if he is a wise man he will add nothing more, except his opinion of its value. If, however, he does give his reasons they must be based on facts and not on hypothesis." *In re Government of Bombay v. Karim Tar Mahomed* (33 Bom. 325).

"It is quite clear from the cases reported that the tendency is for the Courts to rely far more on evidence of sales than on expert opinion." *In re Dorabji Cursetji* (10 Bom. L. R. p. 682).

(2) **By Evidence of Sales.**—That is to say of the same or adjacent land. This is often the safest guide, after making due allowance for all the circumstances: *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. 875).

In cases where there have been no recent sales of the same land to guide the Court, the market-value must be determined by "sales of similar land in the neighbourhood;" and where there is no evidence of any sale in the neighbourhood of a block of equal dimensions, the evidence of sales of small pieces of land can enable the Court to give an opinion regarding the values of different portions of the block, and the value of the whole must be deduced from these: *In re Government of Bombay v. Karim Tar Mahomed* (33 Bom. 325). "But valuing the land as a whole, it would not be correct to add up the retail values of the parts, as derived from the instances of sales of small plots, without making some deduction, both on general principles, and because the wastage must be greater than in those instances from which the retail values have been deduced:" (*Id.* at p. 331).

"If any person or a company could and did pay a certain price for a block of neighbouring land similarly situated, and possessing similar advantages, with a view to some profitable disposition thereof, there is no reason why another block of land, the subject of acquisition under Act I of 1894, should not be similarly valued. The probability of a person or company purchasing the land for a similar purpose is an element for consideration, if the probability is not so remote that it ought to be held to be merely speculative; so that, other things being equal, of two blocks of land the block under acquisition should be taken to be of equal market-value with the other block. This principle cannot be denied:" *Fink v. Secretary of State* (34 Cal. p. 604).

"It is obvious that abnormally high prices should not be included so as to increase the average, just as abnormally low prices should not be included to decrease the average. Nor should the average be affected by sales of properties evidently dissimilar in quality and quantity to the land to be valued. The proper way to deal with a number of instances of sales is to pick out those which relate to land approximately similar to the land to be valued, and then carefully sift the circumstances surrounding each instance. The greater the total number of sales, the greater the chance of there being some which can be useful. But to throw

them all into the average can only result in injustice to one side or the other : " *In re Dhanjibhoy Bomanji* (10 Bom. L. R. p. 712).

No evidence of former sales can be obtained which is precisely parallel in all its circumstances. Differences small or great exist, and what allowance should be made for such differences is not a matter which can be reduced to any hard and fast rule. It will depend on a general consideration of all the circumstances : *Trustees for the Improvement of Bombay v. Karsandas* (33 Bom. p. 32) ; *Roghunath Das v. Collector of Dacca* (11 Cal. L. J. 612).

"An offer does not come within the category of sales and purchases. If an offer for the whole or a portion of the land under acquisition is proved, it amounts merely to an expression of opinion on the part of the offeror. But this can only be proved by the evidence of the offeror himself, and is then relevant. The evidence of offers made by irresponsible* brokers on behalf of undisclosed principals, or perhaps for their own purposes without any principal behind them, is useless, even supposing it is relevant. The evidence that an owner refused an offer so made through a broker is only evidence that in his opinion his land was worth more than the figure of value named, or that the offer was for some other reason of a nature which he was unwilling to accept. Evidence of such offers by brokers for neighbouring land is still less effective. If the offeror himself gives evidence, it is evidence that in his opinion such neighbouring land was of a certain value, and such evidence would only be relevant if he had formed an opinion by comparison of the land under acquisition : " *Government of Bombay v. Merwanji Muncherji* (10 Bom. L. R. p. 919).

(3) **By Capitalising Income.**—To capitalise the annual rental of the land for so many years' purchase is not always the fairest method of valuation, for the rental may be low and inadequately represent the value of the land. Where there is evidence available of sales of similar property in the neighbourhood it is to be preferred : *Premchand Burrall v. Collector of Calcutta* (2 Cal. 103).

On the other hand the rental may be abnormally high and for that reason equally ineffective for the purpose. Where a high rent had been paid by military authorities for the temporary use of land for a rifle range, and a claim was advanced for capitalising this rental at 20 years' purchase, it was held that "in the circumstances an excessive rent cannot reasonably be made the foundation for an excessive and fanciful claim," and that the market-

value of the property sought to be acquired could not be so determined : *Wernicke v. Secretary of State* (13 C. W. N. p. 1058).

The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration : *In re Land Acquisition Act* (34 Bom. 486).

This method may, however, be usefully adopted to compare with the evidence of sales, where both are available : *Harish Chunder Neogy v. Secretary of State* (11 C. W. N. p. 878).

It may also be resorted to when there is no other evidence, or when the case does not admit of other methods. Where the Government of India was desirous of acquiring, solely for the purpose of "saving from destruction and of preserving as public monuments, certain works in the vicinity of Madras known as the Seven Pagodas of Mahabalipuram," it was held by the Privy Council that having regard to the nature of the property and the fact that the temples and ancient carvings had no market-value, the proper, if not the only, method of valuation to be adopted was to estimate the possible rent of the whole property on the basis of the actual rent of a portion of it, and to calculate the compensation at twenty-five years' purchase of the hypothetical rental : *Secretary of State v. Shanmugaraya Mudaliar* (16 Mad. 369).

"In valuing ground by the capitalisation of a ground-rent we do not think that in any case more than twenty years' purchase should be allowed, and in the case of an unsecured ground-rent we doubt whether more than 16½ years' purchase should be allowed : " *Government of Bombay v. Merwanji Muncherji* (10 Bom. L. R. p. 920).

"Every case must depend on its own circumstances, on the evidence given and the nature of the property. The number of years' purchase which it would be right to allow with regard to one sort of property, might not be a fair allowance for other kinds of property, and we wish to guard ourselves against being understood as laying down any rule as to the number of years' purchase which ought to be allowed : *per Couch, C. J., Heysham v. Bholanath Mullick* (11 B. L. R. p. 236).

In *Harish Chunder Neogy's case* 20 years' purchase was thought to be hardly a 'fair basis' of compensation for bustee land, and a sum equal to 25 years' purchase was awarded.

Where the land was leased to Government on a fixed annual rent, the rent was capitalised at 23 years' purchase, after deducting collection-charges and adding thereto the statutory

allowance of 15 per cent. : *Secretary of State v. Sham Bahadoor* (10 Cal. p. 774).

Where certain lands with huts thereon, commonly known as *bustee lands*, within the municipal limits of Calcutta, were acquired by the Government for the benefit of the Corporation, the method of determining the compensation was as follows :—From the gross annual income, or rent of the huts, a deduction of 20 per cent. was made for taxes, and another 20 per cent. on account of repairs, vacancies, collection-charges and other contingencies ; and the net income was then capitalised at 20 years' purchase. The amount arrived at was payable to the owner of the land after a deduction of the price of the huts, to which the tenants were entitled, and the capitalised value of the Government revenue, plus 15 per cent. : *Secretary of State v. Belchambers* (33 Cal. p. 408).

In another case where there was nothing to go upon except the rental of the land, it was held that this might be assessed on the basis of the municipal assessment on the whole area, and that after deducting a sixth for road-cess, and also taxes and ground rents, the balance should be estimated at 20 years' purchase : *Tulshi Makhania v. Secretary of State* (14 C. W. N., notes, p. 80).

Where the letting value of the land is not ascertainable, and the selling value of the lands in the neighbourhood does not afford a reliable guide, the best course is to ascertain what the annual value of the produce of the land in question is, or, in other words, what the tenant makes out of it, and to proceed on that basis : *Ram Sahoy Shah v. Secretary of State* (8 C. W. N. 671). See also *Kailas Chandra v. Secretary of State* (17 Cal. L. J. 34).

Where the property acquired consisted of shops, which were in the possession of mortgagees, it was held that the market-value might be taken to be a capital sum, which, at the rate of 6 per cent. per annum, would yield an income equivalent to the ascertained rental, after deductions for contingencies. "Considering the rate of interest ordinarily obtained in the mofussil a person investing in house property would have a right to expect that the rent should represent a net return of 6 per cent. after deducting all expenses on account of repairs. Against this nominal profit he would have to set the cost of insurance and house taxes, the risk of the house being temporarily untenanted, and other

contingencies varying according to circumstances:” *per* Melvill, J., in *A. D. Carey v. Banu* (10 Bom. H. C. R. 34).

Where a part of the land acquired was occupied and a part unoccupied, it was held that the income of the former might be taken at so many years’ purchase, while the market-value of the latter could be determined *aliunde*, upon such evidence as was available: *Collector of Hooghly v. Rajkristo Mookerjee* (22 W. R. 234).

The Calcutta Municipal Act (III of 1899, sec. 557 (d)) specially provides that the market-value of land or buildings acquired under that Act shall be presumed to be, until the contrary is shown, “twenty-five times the annual value of the property as entered in the assessment-book.”

“Land in Bombay held in perpetuity on payment of a fixed rent to Government is property in the nature of freehold, and passes from hand to hand without the Government demand influencing the price paid. In such cases the market-value of the freehold subject to the Government demand can be ascertained from the prices paid, and that is the amount of compensation to be paid by Government. If the market-value has to be ascertained from the income of the land, the Government demand, whether it be called pension tax, quit and ground, or *toka*, provided it be permanent, must be treated as an outgoing before the net income is capitalised. The Government demand is a tax on the land, and not an interest in the land:” *In re Esufali Salebhai* (10 Bom. L. R. p. 997).

GENERAL PRINCIPLES OF COMPENSATION.

The most advantageous Disposition.—“The fairest and most favourable principle of compensation to the owners” is to estimate the market-value of the property “not according to its present disposition, but laid out in the most lucrative and advantageous way in which the owners could dispose of it.”

This is a well-established principle, and one which, subject to the limitations imposed by later judicial authority, is invariably followed by the Courts. It was explained thus:—“Instead of estimating the value of the property according to its present uses and its present rental, suppose you ascertain what it would be worth if occupied in a different way, as for a bazar, or for shops, or other buildings of a lucrative character:” *per* Garth, C. J., in *Premchand Burrel v. Collector of Calcutta* (2 Cal. pp. 107-8).

It was followed in Bombay in a case where the land in question was suitable for building purposes; and it was held that that would be 'the most lucrative and advantageous way in which the owner could dispose of it.' "The question then is, what would be its market-value if so laid out; and the most reliable evidence on that question must be the rates at which similar building sites in the neighbourhood have recently been sold:" *per* Sargent, C. J., in *Collector of Poona v. Kashinath Khasgiwala* (10 Bom. p. 589).

It was also applied in a case where the land acquired lay "in the vicinity of a town where building was going on, and there was a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes:" *In the matter of the Land Acquisition Act, Munji Khelsey* (15 Bom. 279).

Upon the same principle the Privy Council laid down the rule that "a claimant is entitled to the market-value of his land including such speculative advance therein as had already taken place, in consequence of improvements in the locality, but excluding any future speculative advance" from a like cause, by reason of the prohibition contained in sec. 24, cl. 5 (*post*): *Secretary of State v. Charlesworth, Pilling & Co.* (26 Bom. 1).

"The probable use of land in the most advantageous way, in accordance with or following the use already made of neighbouring lands, leads to speculative advance in prices, and regard should be had to such advance. The utility of land is certainly an element for consideration in estimating its value, that is the utility which may be calculated by a prudent business man:" *Fink v. Secretary of State* (34 Cal. p. 604).

Where the condition and amenities of the land have completely changed, and the land has gone up greatly in value, though the rise in value may not be due to any outlay of the claimants, there are three elements for consideration in valuing the property, *viz.* :—

(1) the position of the land acquired, its general advantages and special adaptability for the use of the owners;

(2) the purposes for which that land could be utilised in the most lucrative way; and

(3) the damage sustained by the claimants by reason of the acquisition injuriously affecting their other property: *Hughli Mills Co. v. Secretary of State* (12 Cal. L. J. 489).

“ Future utility is a thing that people have an eye to in buying land, and the market-price of land is affected by it. Such future utility must be estimated by prudent business calculations, and not by mere speculation and impractical imagination : ” *Rajendra Nath Banerjee v. Secretary of State* (32 Cal. p. 348).

“ The main question in dealing with the valuation of land is whether it can in general be put to some profitable use such as is adapted to the locality in which the land is situated. It is wrong to go further into the future and estimate the exact user to which the land may be put and the profit to be derived therefrom. Such calculations must be purely hypothetical and cannot possibly be based on ascertained facts. There are only two ways in which land can be valued, (1) by determining its value as a whole, as it existed at the date of the notification, (2) by ascertaining its then value on the basis of its being laid out for sale in building plots. The latter is open to the objection that it may be too artificial, but there is no doubt that it is a well-established method of valuation : ” *In re Dhanjibhoy Bomanji* (10 Bom. L. R. p. 706).

“ Government cannot dictate to an owner the way in which he should dispose of his property. He is entitled to rely on the most advantageous way of realising it, but (1) his calculations must be based on the market-value and conditions existing at the date of the notification, (2) the scheme must be capable of being carried out immediately, and (3) it must be adapted to the locality. The valuation must proceed as follows :—The amount of building land available for sale after laying out the land must first be ascertained, and then the amount it should realise from this should be deducted the cost of laying out the ground, and the balance should be written back for half the period allowed for developing and disposing of the property. This will give the theoretical present value of the property to the owner : ” (1*d*).

“ It is obvious that the principle of valuation which requires the fewest ingredients is likely to cause the least difference of opinion and to produce the best results. There are six questions to be determined :—

- (a) The building area :
- (b) The cost of development :
- (c) The value of the building area when laid out for sale :
- (d) The time required for development and disposal ;
- (e) The present value of the sale proceeds :

(f) The deduction to be made for the advantage to the owner of getting cash payment, and so being saved the trouble and risk of development." (*Id.* p. 708).

The third item is 'the crux of the valuation.' "It is impossible to value the plots in any other way except in classes, according to the position and advantages possessed by each. The acknowledged vagaries of the purchasing public cannot in any way be gauged." (*Id.*)

"The use of capital in building and the result to be obtained therefrom vary so enormously, according to the land built upon and the capacities and opportunities of individuals, that they cannot be standardised." (*Id.* p. 714).

Potential Value :—"Tribunals assessing compensation may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land. The principle is applicable whether the owner has acquired the land in order to use it for some particular purpose, or whether he has no such present intention. The purpose for which the promoters intend to use the land is not such a use as can be considered in estimating the potential value : " Lord Halsbury's 'Laws of England,' Vol. VI, p. 37.

"One essential element which must be taken into account in determining the market-value of land compulsorily acquired is the fact of its probable user. The question is what was the probable user of the land on the date of the Government declaration for its compulsory acquisition? In other words, what were its potentialities?" *Government v. Dayal* (9 Bom. L. R. p. 103).

"Land in the neighbourhood of a town always has a potential value. It will not compare with land within the limits of the town, but if placed in the market purchasers will always be found at a higher rate. In addition, particular circumstances may arise to give it a particular potential value," e.g., a "railway scheme, the general increase of trade, or the extension of the activities of the Port Trust." But in assessing the degree in which such circumstances "would affect the value of the land it is necessary to consider how the land affected would be used, and the time within which such use would become effectual."

The method of fixing a price on "the improved value of the land according to the expected uses" should only be adopted "when the expected use is immediately available, and is so obvious that its present value can be ascertained, as, for instance, in the case of a piece of vacant land in the midst of a building area." The proper method, "which is covered by authority, is to assess to the best of one's ability the value of the potentialities in the light of the evidence adduced regarding sales in the neighbourhood, and expert opinion as to the value of the land as it stands:" *In re Dorabji Cusrselji* (10 Bom. L. R. pp. 678—680).

It is the same in England. "The true rule is that, in assessing compensation, the umpire may and ought to take into consideration every circumstance which is in existence as a fact at the moment when the notice to treat is given, and not only those circumstances, but also the probable use which might be made of the property. If, for instance, he has to assess the value of land which is used as agricultural land, he is entitled to take into consideration its adaptability for building land, because that is a fact which is in existence at the time the notice to treat is given. If after the notice to treat has been given and before the assessment, some inherent value in the land is discovered, which was neither expected nor discovered at the time, that circumstance would properly be taken into consideration, because it was, although unknown, a fact existing which affected the value of the property. But when it is proposed to take into account a contingency which cannot be anticipated and cannot be measured, that is quite a different thing, and I think such a contingency ought not to be taken into consideration at all:" *per* Vaughan Williams, L. J., in *Bullfa and Merthyr Dare Steam Collieries, Ltd. and Pontypridd Waterworks Co.* ([1902] 2 K. B. at p. 140).

"Although land may possess certain potentialities it does not follow that those potentialities have any present value:" *In re Sqrabji* (10 Bom. L. R. 696).

Special adaptability:—"At a very early date in the history of this branch of the law there arose what is known as the question of 'special adaptability.' The phrase is not a happy one, for special adaptability for some purpose or other is the very basis of the market-value of all land. In agricultural land extra fertility, in town lands advantages of site, are true cases of special adaptability for farming or building purposes. These tend so

directly to increase both the value and the market-price of lands in the hands of a private owner that it has never been doubted that he could urge them in augmentation of the compensation which he was entitled to receive. The question has arisen only in the cases where the special adaptability is for purposes for which lands are required only when used for works of public utility, which are naturally different from the uses to which lands are put while in private hands, and which therefore do not necessarily influence the price which such lands command in the market."

"The decided cases seem to me to have hit upon the correct solution of this problem. To my mind they lay down the principle that where the special value exists only for the particular purchaser who has obtained powers of compulsory purchase it cannot be taken into consideration in fixing the price, because to do otherwise would be to allow the existence of the scheme to enhance the value of the lands to be purchased under it. But where the special value exists also for other possible purchasers, so that there is, so to speak, a market, real though limited, in which that special value goes towards fixing the market-price, the owner is entitled to have this element of value taken into consideration, just as he would be entitled to have the fertility or the aspect of a piece of land capable of being used for agricultural purposes:" *per* Lord Moulton in *Lucas and Chesterfield Gas and Water Board, In re* ([1909] 1 K. B. pp. 30-31).

"In assessing the amount to which the landowner is entitled, the jury have to consider the real value of the land, and may take into account not only the present purpose to which the land is applied, but also any other beneficial purpose to which in the course of events, at no remote period, it may be applied, just as an owner might do if he were bargaining with a purchaser in the market:" *per* Cockburn, C. J., in *Queen v. Brown* (L. R. 2 Q. B. p. 631). In this case agricultural land was held to have a potential value for building purposes.

And so where a railway company acquired land which, from its proximity to a reservoir, would have been suitable for building a mill, it was held that that was an element to be taken into account in assessing the value: *Ripley v. Great Northern Railway Co.* (L. R. 10 Ch. App. 435). See also *Daya Khusal v. Assistant Collector, Surat* (38 Bom. 37).

Where land was acquired which had been bought by the owner for the purpose of building a school, and there was no other suitable

land available in the neighbourhood, it was held that this must be taken into consideration, even though no steps had been taken towards carrying out the project : *Bailey v. Isle of Thanet Light Railways Co.* ([1900] 1 Q. B. 722).

Where land is taken compulsorily for any purpose the fact that it has peculiar natural advantages for a particular purpose is an element for consideration in the assessment of compensation, apart from any special value created or enhanced by the scheme of the acquisition : *In re Gough and Aspatia, &c.* ([1904] 1 K. B. 417). See under sec. 24, cl. 5.

The special adaptability of land for a particular purpose is not affected, as an element of value in the assessment, by the fact that the purpose could not be carried out except by the promoters under their statutory powers. In determining the amount of compensation the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose : *Lucas and Chesterfield Gas and Water Board, In re* ([1909] 1 K. B. 16). See also *Bombay Improvement Trust v. Jalbhoy* (33 Bom. p. 496).

Although a piece of land taken by itself may have no special adaptability, if, by reason of its situation and proximity to other land, it might be made adaptable to a particular purpose, this should be regarded as an element for valuation : *Mayor of Tyne-mouth and the Duke of Northumberland* (89 L. T. 557).

If the owner of land sought to be acquired claims for it a certain character, e.g., as a building site, the onus is on him to prove it, like an ordinary plaintiff.

"It is not at all necessary for a claimant, who claims on the basis of building land, to prove that there is a present demand for building in the neighbourhood ; it is sufficient for him if he can prove that the strong probabilities are that his land will have in the not too remote future a building value." By this is meant, such probabilities as would induce an ordinarily prudent man to invest in the land with that object in view : *per* Edge, C. J., *Dhani v. Superintendent of Dhera Dun* (10 A. W. N. 129). But see also *In re Dorabji Cursetji* (10 Bom. L. R. pp. 678—80), *ante*.

But however suitable a piece of land might be for building purposes, if the owner had been interdicted from building on it by some municipal authority, it would have no value at all as a building site, at least so far as the owner was concerned : *Ujaga Lal v. Secretary of State* (33 All. 733).

In the valuation of residential property "the first question to determine is whether there is a demand, and if there is a demand the original cost is the most important element for consideration. A man who buys land and builds thereon does not necessarily produce a marketable commodity of the value of his outlay, but it does not follow that he never does, for if there is a demand for residences in a particular locality, and the supply is limited, a purchaser will consider not only the procurable rent of houses in the market, but the cost to himself of building a new one": *In re Land Acquisition Act, etc.* (34 Bom. p. 488).

"The value of the land to the owner is what must be regarded, and that is the price which it will fetch if disposed of on the most profitable terms. There is no doubt that here the most profitable method of disposing of it is to lay it out in small parcels for building sites, and the owner is not to be deprived of the most advantageous way of selling his land by reason of the fact that it is subject to immediate acquisition. If the sale of the land in building sites is impossible except through the speculator, then no doubt allowance will have to be made for the profits, costs, and other charges of the speculator. But the claimant is not to be debited with these expenses unless the introduction of the speculator is a commercial necessity. And we can see no necessary reason why the claimant should be driven to have recourse to the speculator for a business which he could do for himself."

"So much then as to this special method of valuation. But it is important to observe that the Tribunal has not relied exclusively on this method. It has employed this method in conjunction with the method of ascertaining the present value of the land by reference to the prices realised by the sale of neighbouring lands. And since the consequence is that these two methods lead to very much the same result it follows not only that the result is entitled to so much the greater degree of confidence, but also that the method of hypothetical development is itself corroborated."

"It is plain that no evidence of former sales can be obtained which shall be precisely parallel in all its circumstances to the sale of the land in reference. Differences small or great exist in various conditions, and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast law. Upon a general consideration of all the circumstances we are of opinion that the neighbouring sales afford ample support

for the view which the Tribunal took :'' *Trustees for the Improvement of the City of Bombay v. Karsondas* (33 Bom. pp. 30—32).

"A claimant is entitled to the benefit of a good bargain he has been able to make before the land was notified, provided he can prove its present value with a reasonable degree of accuracy, but this cannot be done by merely suggesting that within ten or twenty years the land will increase in value : that is a question of chance :'' *In re Dorabji Cursetji* (10 Bom. L. R. p. 683).

Value of Situation :—"The suitability of the situation, its salubrity, its vicinity to a large and growing industrial or populous centre, the demand for such additional building accommodation, these are the elements which confer on lands their natural value as building sites :'' *Bhujabalappa v. Collector of Dharwar* (1 Bom. L. R. at p. 456).

"The immediate contiguity to a highway, commonly called frontage, is a well-known and powerful element in the value of all lands in populous districts. Where frontage to a high road does not exist, propinquity and easy access to a high road are equally undoubted elements of value in such districts, distinguishing lands which have them from those which have them not :'' *per Lord Penzance in Metropolitan Board of Works v. McCarthy* (L. R. 7 H. L. at p. 263).

"When determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the buildings in the locality, but in an ordinary shop and chawl locality it has been the custom for surveyors to calculate the depth at 100 feet. In the next place the value of a building frontage must depend on the higher rents that can be obtained for the shops or rooms facing the street, and as the proportion of these rents to the lower rents of the back rooms decreases so does the value of the whole frontage land decrease. The value of frontage land with a depth of 40 feet would be 50 per cent. more valuable than if the depth were 100 feet, but the value of the 60 feet behind would decrease in greater proportion. A depth of 100 feet therefore has been admitted to give the best average."

"There are two alternatives, either to take a deep frontage which must have a piece of back land of very little value, ~~or~~ to take a lesser frontage which while increasing the value of the back land would at the same time increase the propor-

tion of back land to front land. But I must decline to accept as a hard and fast rule that back land must be worth half the frontage and. Whether the depth of the frontage is taken at 40 feet and higher retail values allowed with a larger proportion of back land, or the depth is taken at 100 feet and lower values allowed with a greater proportion of front land, the totals come to much the same : " *per* Macleod, J., in *In re Government of Bombay v. Karim Tar Mahomed* (33 Bom. pp. 328—332). See also *Guru Das v. Secretary of State* (18 Cal. L. J. 244)

The Calcutta Municipal Act [sec. 557 (d)] precludes any valuation based on the most advantageous disposition of land, as it fixes the scale at 25 years' purchase : *Harish Chander Neogy v. Secretary of State* (11 C. W. N. 875). This was followed in *Manindra Chandra Nandi v. Secretary of State* (41 Cal. 967). See *Appx. C. post.*

Hypothetical Building Scheme :—" This method consists in an attempt to value a parcel of land by means of figures based upon the calculated financial results of a notional erection of buildings on the land, and its notional development in the most profitable manner. The land to be assessed is imagined as covered with as many houses or shops of as profitable a character as can be reconciled with existing and presumed future circumstances of demand. Then the net annual returns from these buildings are capitalised, and from this figure the calculated cost of construction is deducted. The balance is said to be the prospective value of the land, and from this figure the present value is inferred by deducting various sums on account of loss of interest on capital and so forth : " *Government of Bombay v. Merwanji Muncherji* (10 Bom. L. R. 907).

" The scheme depends entirely on the validity of three propositions, of which the first is that the present market-value of land on which buildings have been erected can be ascertained by deducting the cost of construction from the capitalised net annual rental. Then it is asserted that the prospective market-value of land which is now vacant can be ascertained by deducting the estimated cost of the buildings, which it is supposed can be erected on the land, from the capitalised net annual rent which it is estimated such buildings will produce. Lastly, it is asserted that the present market-value of the land can be ascertained by making certain deductions from the prospective market-value. It is clear that unless the first proposition is true the other two propositions

cannot be true, and the hypothetical building scheme is out of Court. In our opinion the first proposition is not true. We think that a scheme of this sort considered as evidence is bad, as being too remote, speculative, and conjectural." (*Id.* p. 910).

The same views were expressed by the Bombay High Court in two other cases.—*In re Dhanjibhoy Bomanji* (10 Bom. L. R. p. 703) and *In re Government of Bombay v. Karim Tar Mahomed* (33 Bom. p. 331). But the Privy Council, in reversing the decision on appeal in *Merwanji's case*, have held that, in estimating the value of vacant land suitable for building on, evidence may be given of a hypothetical building scheme, and that it may be tested on the merits like any other scheme.

"Hypothetical building schemes are the usual basis of valuation in the case of building land. I can say this from my own experience of such cases. The ordinary course will be to call a surveyor who will say that in his opinion the land is worth so much. When asked for his reasons he will proceed to unfold his scheme, saying that he values it at so much because an owner, by expending so much on buildings of such and such a description, can realise such and such a rent which when capitalised will be worth the sum named by him. In cross-examination the surveyor's scheme will of course have to be tested in all its details. But the scheme is certainly admissible in evidence and is a proper mode of valuation." *per* Lord Shaw. "I am of the same opinion. Hypothetical building schemes seem to me to be the most obvious basis of valuation in cases like these. Of course the weight to be attached to such a scheme is a question for the tribunal hearing the case. I have no doubt that the Judges are perfectly competent to decide what weight ought to be attached to any scheme that may be put forward by the parties. All that their Lordships decide is that such schemes are admissible in evidence and must be considered on their merits in every case." *per* Lord Macnaghten.—*Merwanji Muncherji v. Government of Bombay* (16 Bom. L. R. 55).

Inclusion of Cost of Buildings:—"The fallacy of valuing land and buildings separately and taking the total as the value of both seems too obvious to require being exposed. It by no means follows that if a man spends Rs. X on land and Rs. Y on buildings he produces a property worth Rs. X + Y. The property must be valued according to what it is worth in the market, and not by what it costs." *In re Dhanjibhoy Bomanji* (10 Bom. L. R. p. 710).

“It cannot be too clearly laid down that under ordinary circumstances the value of an income producing property depends on its income, irrespective of its cost, and that capital once invested in land and buildings cannot be apportioned between them so as to give the market-value of each :” *In re Government of Bombay v. Karim Tar Mahomed* (33 Bom. p. 330).

Exclusion of Cost of Improvements :—“The market-value is not to be estimated by the costs of what may have been done to preserve the land. It is not to be estimated by the money the owner may have spent in improving the land ; for a man might spend a great deal of money on improvements, and yet the result might be that the market-value was not increased to the amount which he had thought fit to spend :” *per Couch, C. J.*, in *Collector of Hooghly v. Rajkristo Mookerjee* (22 W. R. at p. 235).

It would be altogether wrong to take “the amount which the claimant has expended in the purchase and improvement of the land as if it had been invested on loan since the date of such expenditure” and to treat “the total amount so arrived at as the market-value of the land :” *Secretary of State v. Kartic Chandra Ghose* (9 C. W. N. 655).

Valuation of Roads and Ways :—The question of assessment would depend on whether they were private or public. If they were private and appertained to the land which was sought to be acquired, they would, it is presumed, be included in the assessment of the whole site : see *Trustees for the Improvement of the City of Bombay v. Karsondas* (33 Bom. 23).

If, however, the road in question were shown on the evidence to be a public way, it is obvious that no claim for compensation could be entertained in respect of it. Where a claim was made in respect of a road alleged to be private, and it was found that ‘it communicated at one end with an important thoroughfare and at the other with several passages,’ and that it was shown in a map which dated back to 1825 as a “defined roadway running between lines of houses in a populous quarter,” it was held that the claim was rightly rejected. The tests applied in this case were that the road was “open to public access, in a populous quarter, and affording communication with other roads or ways.” In addition to these there had been no interruption at any time to the public right of way : *Jalbhoj Ardesir v. Secretary of State* (13 Bom. L. R. 931).

And so where land was acquired for the purpose of constructing a dock, and a portion of it consisted of roads which had been open to the public for more than fifty years, though there was no evidence of any dedication, it was held by the Privy Council that the land in question as 'roads' had no market-value: *Manmatha Nath Miller v. Secretary of State* (L. R. 24 I. A. 177).

"If the owner of the soil throws open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public. Although the passage in question was originally intended only for private convenience the public are not now to be excluded from it, after being allowed to use it so long without interruption:" *per* Lord Ellenborough in *Rex v. Lloyd* (1 Camp. 260).

Reinstatement Principle :—"When the land is used for some particular purpose not of a commercial nature, such as for a public park, or for a church or school, it is very difficult to estimate the loss. One method adopted is that known as reinstatement, by which is meant that the amount of compensation to be awarded shall be assessed according to the cost of acquiring an equally convenient site and erecting equally convenient premises:" Lord Halsbury's 'Laws of England,' Vol. VI, p. 37.

"There are some cases in which the income derived, or probably to be derived, from land, would not constitute a fair basis in assessing the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken, by premises or lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all the cases to which the principle of reinstatement is applicable. But we may instance churches, schools, hospitals, houses of an exceptional character, and business premises in which the business can only be carried on under special conditions:" Cripps, 'Law of Compensation,' p. 118.

This principle of compensation was held to be applicable to a case in which a railway company acquired under statutory powers a church and the lands appertaining thereto. Here the Company

paid to the owner of the lands not forming the site of the church the value of those lands, and in respect of the church and site, to the bishop of the diocese, a sum of money sufficient to purchase another site and build a new church. The principle was thus stated by the Court:—"By the appropriation of property to ecclesiastical or spiritual purposes, the owner voluntarily sacrifices the pecuniary value of the property so appropriated: but he makes that sacrifice to attain an object which he estimates of greater value than pecuniary value. But when that object is entirely withdrawn from him, by the application of the property, against his will, to secular uses, and those uses connected with pecuniary profit, it does not seem consistent with justice to estimate the value to the owner upon the footing of its irrevocable appropriation to those spiritual purposes from which it has been already withdrawn:" *per* Wilde, C. J., in *Hilcoat v. Archbishop of Canterbury* (10 C. B. p. 347).

This has been approved by the Court of Appeal in a more recent case as laying down the true principle to be applied in such cases in preference to that adopted in *Stebbing's Case*. Vaughan Williams, L. J., after citing the passage quoted above proceeds thus:—"It seems to me that this is so, not only with reference to ecclesiastical property, but with reference to every sort of property which is devoted to such purposes that it cannot be sold:" *City and South London Railway and St. Mary Woolnoth and St. Mary Woolchurch Haw* ([1903] 2 K. B. p. 736).

The decision in *Stebbing's Case* appears to rest on other considerations. See under sec. 24, cl. 5, *post*.

In England clauses are frequently inserted in special Acts providing for compensation on the reinstatement principle, for the benefit of schools, hospitals, and institutions of that nature. In a case where a Railway company acquired land from the London School Board, part of which had been acquired by them for erecting a school, Lord Esher, M. R., said:—"The section of the private Act was substituted for the section of the Lands Clauses Act, which gave compensation for land taken. It did not direct the arbitrator to assess the value of the thing taken, but substituted for it the costs and expenses of acquiring a new site. The natural meaning of those words must include the cost of the new site. The site ought to be as nearly as possible the same as the old site, and the

school ought not either to gain or lose in acquiring the new site:” *London School Board v. South Eastern Railway Co.* (3 T. L. R. 710).

“*The Land.*”—That is the particular piece of land which is to be acquired, and of which the market-value has to be determined. Land has been defined in the Act (s. 3(a), *ante*) and includes a variety of interests such as mines and minerals, buildings, trees, crops, easements and other incumbrances (see under sec. 3 (a), (b), ss. 16 and 19 (1) (a), *ante*). They are all subjects for compensation.

“Where the market-value of the land has to be ascertained for the purposes of sec. 23 the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued, including all the interests in it. This is brought out by sub-sec. (3) of sec. 31, which makes special provision for a person having a limited interest in the land:” *per Jenkins, C. J., in Collector of Belgaum v. Bhimrao* (10 Bom. L. R. p. 658).

“The method contemplated by the Act is that of ascertaining first the market-value of the land as if all separate interests combined, and then of apportioning that value among the persons interested. That means that the separate interests are taken to combine so as to give a complete title to the assumed purchaser and the acquiring body, not so as to impress upon the land a character which it did not bear, or give to it a value which it never had in the market:” *Bombay Improvement Trust v. Jalbhoy* (33 Bom. pp. 495-6). And see *Jalbhoy Ardesir v. Secretary of State* (10 Bom. L. R. 931); and *Raghunath Das v. Collector of Dacca* (11 Cal. L. J. 612).

“*The date of the publication of the declaration.*”—This means publication in the official gazette in accordance with the provisions of sec. 6 (2), *ante*. The date of the declaration is fixed as the time at which the market-value must be determined. Under the previous Act (X of 1870) it had to be determined as at the time of awarding compensation, which gave rise to difficulties. A period of two or three years might intervene between the taking of possession and the award of compensation, during which time the market-value would fluctuate according to circumstances. It was determined therefore by the Legislature “that the market-value should be fixed as at the date on which the Government gave notice of its intention to acquire the land. Nothing occurring subsequently to that date should be allowed to affect the question” (see Introduction).

Under the Lands Clauses Act, 1845, the 'notice to treat' (sec. 18) determines the time at which the value of the interest is to be assessed for purposes of compensation. "Every man's interest shall be valued, *rebus sic stantibus*, just as it occurs at the very moment when the notice to treat was given:" *per* Wood, V.-C., in *Penny v. Penny* (L. R. 5 Eq. 227).

"In assessing compensation the umpire may and ought to take into consideration every circumstance which is in existence as a fact at the moment when the notice to treat is given:" *per* Vaughan Williams, L. J., in *Bwlfa and Merthyr Dare Collieries Ltd. and Pontypridd Waterworks Co.* ([1902] 2 K. B. p. 140).

"The period of giving such notice is the period to which all questions relating to the right of compensation must be referred:" *per* Willes, J., in *Tyson v. Mayor of London* (L. R. 7 C. P. 18).

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

COMMENTARY.

This provision is new, and its introduction into the Act, the reason for which may not be obvious at first sight, is due to the alteration of the previous clause. When the date of the declaration was fixed as the time for determining the market-value, it obviously became necessary to provide for the contingency of crops or trees coming into existence in the interval between the date of declaration and the time of taking possession (see Preliminary Report, cl. 7, *Appx. D*).

It is presumed that "standing crops or trees" which were in existence at the date of the declaration would be included in the general award, as "things attached to the earth, as part of the land acquired (see ss. 3 (a) and 19 (1) (a), *ante*) ; or if the land was acquired under an emergency under sec. 17, they would be dealt with in the manner provided by sec. 17 (3).

"*Person interested.*"—See sec. 3 (b).

"*Collector.*"—See sec. 3 (c).

"*Land.*"—See sec. 3 (a).

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

COMMENTARY.

Cf. Act X of 1870, sec. 24 (2). *Cf.* also 8 & 9 Vic., c. 18, ss. 49, 63.

This and the next clause embody well-known English principles of Compensation. The Lands Clauses Act, 1845 (s. 63), provides for compensation for any damage sustained by the owner by reason of the severance of the lands taken from the 'other lands' not taken, or any other injurious affection. The two provisions, which are kept distinct in this Act, are combined in the English statute, so that the English decisions are applicable to either or both.

" *Person interested.*"—See sec. 3 (b), *ante*.

" When part of an owner's land is taken he may suffer damage in consequence of the injury thereby caused to his remaining land. It may, for instance, be cut into two parts, as when a line of railway is made through an estate, or the alteration in its size or shape may render it less suitable for the purposes to which it was or might have been applied. It may be also rendered less valuable by reason of the construction, existence, and carrying on of the undertaking in its vicinity : " Lord Halsbury's 'Laws of England', Vol. VI, p. 39.

" The legislature in giving powers to companies to take land compulsorily contemplates the giving of compensation in two cases, the one for land actually taken, the other for damage to the land held at the same time with the land taken, by reason of the severance, or by reason of the land not taken being injuriously affected by the execution of the undertaking : " *per* Cockburn, C. J., in *Holt v. Gas Light and Coke Co.* (L. R. 7 Q. B. at p. 734).

The statutory right to compensation for injurious affection due to severance has been very clearly explained by the House of Lords in the leading case of *Cowper Essex*. This principle was enunciated, as the result of all the authorities, in the following terms :—" A proprietor is entitled to compensation for depreciation of the value of his other lands, in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory

powers," that is to say "not merely in respect of the construction of works upon land taken from him, but of the subsequent use of these works authorised by statute:" *per* Lord Watson in *Cowper Essex v. Local Board for Acton* (L. R. 14 App. Cas. pp. 165-6).

But on the other hand, "in the case of a proprietor from whom nothing has been taken by the promoters, it has been settled by a series of decisions in this House, that although his land in the vicinity will necessarily be injured by the use of their works, yet it is not thereby 'injuriously affected' within the meaning of the Act of 1845, and that he is not entitled to statutory compensation for injury so occasioned." (*Id.* at p. 164). The reason for this is obvious, for there could be no right to compensation under the Act if there had been no acquisition. But this, of course, would not affect his common law right to damages.

In other words, "Where part of a proprietor's land is taken from him, and the future use of the part so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affecting of the proprietor's other lands, though it would not be an injurious affecting of the land of neighbouring proprietors from whom nothing had been taken, for the purpose of the intended works:" *per* Lord Halsbury, L. C. (*Id.* p. 161).

As to the distinction between these two classes of cases see *per* Lord Chelmsford in *Duke of Buccleuch v. Metropolitan Board of Works* (L. R. 5 H. L. at p. 458). See also *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. p. 350).

Just as the prospective value of land is to be considered in assessing compensation, so the prospective depreciation by severance must also be considered, if the effect of the severance is likely to render any part of the land useless: *per* Cockburn, C. J., in *Queen v. Brown* (L. R. 2 Q. B. 630).

The right to compensation for prospective damage due to severance has also been affirmed by the House of Lords. "The right to compensation extends to any land of the claimant injured by the severance of that which is purchased, or by the works which the Company are authorised to construct; and the test is whether the land which the claimant retains can be proved to be injuriously affected by this severance or by these works:" *per* Lord Campbell, L. C., in *Caledonian Railway Co. v. Lockhart* (3 Macq. H. L. at p. 815).

"When lands are required for the purpose of a public undertaking and the owner claims compensation for injury to other lands held therewith, I think the tribunal which assesses compensation is bound to take into consideration the purpose of the undertaking, the consequences likely to result from the execution of the works on the lands required, and any alteration in the character of the property which those works are calculated to bring about." *per* Lord Macnaghten in *Cowper Essex v. Acton Local Board* (L. R. 14 A. C. p. 169).

"There a piece of the claimant's land had been acquired for sewage purposes, and the question was whether he was entitled to compensation for the damage sustained by reason of this injuriously affecting his other lands, by the exercise of the statutory powers. It was argued that the damage, if any, would result only from the future use or abuse of the land, and that if the land had been acquired without statutory powers no action would have lain for the construction of the works. Their Lordships held that the claimant was entitled to compensation, and the ground of their decision was that the contemplated or intended use of the land for the purpose for which it was taken caused a depreciation in the value of the claimant's other land, although the sewage works might be so conducted as to cause no nuisance." *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. p. 351). See also *Queen v. Essex* (L. R. 14 Q. B. 753).

"*By reason of severing such land.*"—This obviously means that the damage sustained must be the direct result of the severance, otherwise the 'person interested' would not be entitled to compensation under this head. The corresponding expression in the next clause, is 'by reason of the acquisition' (see under cl. 4). And see *per* Lord Watson in *Cowper Essex's Case* and *per* Cockburn, C. J., in *Holt's Case*.

"*Other land.*"—It is not necessary that the land affected should be in actual contiguity with the land taken. No general rule can be laid down as to what lands are to be regarded as 'severed,' for each case must depend on its own circumstances. It has, however, been held that "where several pieces of land owned by the same person, are so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act; so that, if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation:" *per* Lord Watson in *Cowper Essex v. Local Board for Acton* (supra p. 167). And see under sec. 3(a), *ante*.

And so where the land injuriously affected was held by the owner "at the same time and for a common purpose, and was connected with" the land taken, it was held that the conditions of the statute were satisfied, although a space might intervene between the two which belonged to some one else. All that is to be considered is "the question whether the land not taken has been injuriously affected by the taking of that which has been taken:" *per* Cockburn, C.J., in *Holt v. Gas Light and Coke Co.* (L. R. 7 Q. B. p. 735).

"At the time of the Collector's taking possession."—It has been held that "these words cannot mean that compensation can only be given for the damage which had actually at that time been sustained, without reference to a continuing damage caused by the acquisition. The damage must be by reason of the acquisition:" *Collector of Dinagore v. Girja Nath Roy* (25 Cal. at p. 352).

The meaning of this is not very clear, but having regard to the lucid exposition of the same principle by the House of Lords in the case of *Cowper Essex*, it may be presumed that what was intended by the Legislature, in framing this clause, was that the Court is to take into consideration the prospective damage or depreciation likely to accrue from "the anticipated legal use of works to be constructed upon the land which has been taken." This, as Lord Watson explains, would include both the construction and the prospective use of the works projected.

In assessing compensation under this head, the tribunal which does so would be bound, as Lord Macnaghten says, to take into consideration "the purpose of the undertaking, the consequences likely to result from the execution of the works on the lands required, and any alteration in the character of the property which those works are calculated to bring about" (*supra*).

From this it is clear that the damage to be estimated is prospective not past, and that the time from which it is to be reckoned is the time of taking possession, before which, of course, the works could not be commenced, nor a proper estimate be made. The same expression is used in the next clause (see under cl. 4). See also ss. 16, 17, *ante*.

"It is well known law that under these statutes a party must make one claim for damages, once and for all, for all damages that can reasonably be foreseen, and have one inquiry and one compensation:" *per* Erle, C. J., in *Chamberlain v. West End of London and Crystal Palace Railway Co.* (32 L. J., Q. B. at p. 178).

"The statute provides that compensation in respect of land taken, and in respect of land injuriously affected, shall once and for all be settled and there is no provision whatever for any future damage presenting itself not contemplated by the parties at the time of compensation:" *per* Cockburn, C. J., in *Croft v. London and North-Western Railway Co.* (32 L. J., Q. B. at p. 119).

These remarks apply with equal force to those clauses in which the principles of the English law are embodied

"Collector."—See sec. 3 (c), *ante*.

Where land was acquired for the construction of a railway, through a tea estate, with the result that the line which traversed the garden for a mile and a half through deep cuttings, divided it into two portions, thereby causing inconvenience and expense in working, it was held that the Tea Company were entitled to further compensation for the severance: *Baraora Tea Co. v. Secretary of State* (28 Cal. 685).

Where however, a claim for severance was based on the prospective employment of a Brahman cook to carry offerings of food to the idols of a temple, it was held that the claim was "too sentimental to admit of any compensation being awarded:" *Collector of Poona v. Kashinath Khasgiwala* (19 Bom. p. 591).

When the claim advanced on account of severance is "unreasonable or excessive," it is open to the Government to take up the whole of the land (see sec. 49 (2), *post*).

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

COMMENTARY.

Cf. Act X of 1870, sec. 24 (3). *Cf.* also 8 & 9 Vic., c. 18, ss. 49, 63, 68; and c. 20, ss. 6, 16.

This clause embodies the English principle of 'injurious affection.' Every sort of actual injury caused by the acquisition of the property must be taken into account (see Introduction).

"The intention of the Legislature, to be gathered from the Act, seems to have been that persons, a part of whose land has been

compulsorily taken from them, should, apart from its actual value, be compensated for injury done to their other property by the taking." *Collector of Dinagapore v. Girja Nath Roy* (25 Cal. p. 354).

'Where by the construction of works there is a physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of, in connection with such property, and which right gives an additional market-value to such property, apart from the uses to which any particular owner or occupier might put it, there is a title to compensation, if by reason of such interference the property, as a property, is lessened in value:" *per* Lord Cairns, L. C. This rule was adopted by the House of Lords in the same case, but subject to a slight qualification. "I think the rule thus stated may be accepted with this necessary qualification, that where the right which the owner of the house is entitled to exercise is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world:" *per* Lord Chelmsford, in *Metropolitan Board of Works v. Mc Carthy* (L. R. 7 H. L., pp. 253, 256).

In this case the claimant lived and carried on business as a contractor in a house on the bank of the river Thames, access to which was had through a public dock. In the execution of works authorised by a special Act an embankment was constructed along the foreshore of the river, whereby the dock was stopped up and the claimant's access to the river destroyed. It was held that he was entitled to compensation for the injurious affection and consequent diminution in value of his property. "By the access given by the dock to and from the river, the premises were rendered more valuable as premises to sell or occupy, with reference to the uses to which any owner might put them. In other words, the access to and from the Thames by means of the dock was a valuable appendage to the premises, and by the stopping up and destruction of the dock the premises became and were permanently damaged and diminished in value." This was an injury to the claimant apart from that sustained by the public generally who lived in the neighbourhood: *per* Lord Chelmsford (*Id.* at p. 257).

"If the lands of any owner have a special value by reason of their proximity to any particular highway, surely that owner will suffer special damage in respect of those lands beyond that suffered by the general public, if the benefits of that proximity are withdrawn by

the highway being obstructed." And again, "In each case the right to compensation will accrue whenever it can be established that a special value attached to the premises in question, by reason of their proximity to, or relative position with, the highways obstructed, and that this special value has been permanently destroyed or abridged by the obstruction:" *per* Lord Penzance, (*Id.* at pp. 263-4).

Where a mansion on the Thames had a large garden frontage on the river, and a portion of the land appertaining to it was taken for the construction of an embankment with a public highway on it, it was held that the owner was entitled not only to the value of the land taken, but also to further compensation for the injury caused to his other land. "It can hardly be doubted that in addition to the damage sustained by the loss of the river frontage the house must have been 'injuriously affected'—i. e. depreciated in value—by the interposition between it and the river of an embankment to be used as a public highway:" *per* Lord Chelmsford in *Duke of Buccleuch v. Metropolitan Board of Works* (L. R. 5 H. L. at p. 460).

"The obstruction, by the execution of the work, of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation. A right of access by a public road must, no doubt, be proximate and not remote or indefinite, in order to entitle the owner of that property to compensation for the loss of it:" *per* Lord Selborne, L. C., in *Caledonian Railway Co. v. Walker's Trustees* (L. R. 7 App. Cas. at 276).

And so where a house had a frontage on a public road, and a railway company under their statutory powers constructed an embankment in front of it, thereby narrowing the roadway and obstructing the access of light and air, it was held that this was a permanent injury to the estate such as would entitle the owner to compensation under the Act: *Beckett v. Midland Railway Co.* (L. R. 3 C. P. 82).

Similarly, where the value of a hotel, for selling or letting as such, was diminished by the construction of works executed by a railway company under statutory powers, the owner was awarded compensation: *Wadham v. North Eastern Railway Co.* (L. R. 14 Q. B. 747).

Where a house consisted of two portions—a front block and a back block—and the occupants of the back block, had a right of

access through the hall in the front block, and a railway company in the exercise of compulsory powers took down the front block of the building including the hall, thereby interfering with the use and enjoyment of the passage through it, it was held that this was not a mere matter of personal inconvenience but a substantial interference with the premises which injuriously affected their value, and was therefore a fit subject for compensation: *Ford v. Metropolitan and Metropolitan District Railway Co.* (L. R. 17 Q. B. D. 12).

The rule of compensation under the statute for obstruction to ancient or modern lights is the same as that at common law. "On this point the rule seems to be, that the plaintiff is entitled to recover for all the damage caused which was the direct consequence of the wrongful act, and so probable a consequence that if the defendant had considered the matter he must have foreseen that the whole damage would result from that act." *per* Lord Esher in *In re London, Tilbury and Southend Railway Co.* (L. R. 24 Q. B. D. at p. 329).

"It may be taken to have been finally decided that in order to found a claim to compensation under the Acts there must be an injury and damage to the house or land itself in which the person claiming compensation has an interest. A mere personal obstruction or inconvenience, or a damage occasioned to a man's trade or the goodwill of his business, although of such a nature that but for the Act of Parliament it might have been the subject of an action for damages, will not entitle the injured party to compensation under it." *per* Lord Chelmsford in *Metropolitan Board of Works v. McCarthy* (L. R. 7 H. L. at p. 252).

And again, "There are many things which a man may do on his own land with impunity, though they seriously affect the comfort, convenience, and even pecuniary value which attach to the lands of his neighbour. In the language of the law these things are '*damna absque injuria*,' and for them no action lies. There is another rule which is, I conceive, well settled in these cases, namely, that the damage or injury, which is to be the subject of compensation, must not be of a personal character, but must be a damage or injury to the 'land' of the claimant considered independently of any particular trade that the claimant may have carried on upon it. This was decided in *Reg. v. Metropolitan Board of Works* (L. R. 4 Q. B. 358):" *per* Lord Penzance (*Id.* at p. 261).

Where, by the construction of a bridge and a new thoroughfare leading to it, the main traffic, which used to pass by a public house, was entirely diverted from it, it was held by the House of Lords that this was an injurious affection of the premises which would give the owner a right to compensation. "If a house were rendered less accessible to customers that, might diminish the value of the house for all purposes:" *per* Lord Herschell, L. C., in *Metropolitan Board of Works v. Howard* (5 T. L. R. 732).

On the other hand where a public house was situated by the side of a public foot-way, and a railway company under their statutory powers obstructed temporarily certain streets which led to the foot-way, and thereby rendered access to the public house inconvenient, to the detriment of the owner's business, it was held that the damage was not of such a nature as to entitle him to compensation: *Ricket v. Metropolitan Railway Co.* (L. R. 2 H. L. 175).

"The injury must be actual injury to the land itself as by loosening the foundation of buildings on it, obstructing its light, or its drains, making it inaccessible by lowering or raising the ground immediately in front of it, or by some such physical deterioration. Any other construction of the clause would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature:" *per* Lord Cranworth (*Id.* at p. 198).

In commenting on the decision in *Ricket's Case* the House of Lords said that it established that "loss of trade or custom, by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right incident thereto, is not by itself a proper subject for compensation:" *per* Lord Selborne, L. C., in *Caledonian Railway Co. v. Walker's Trustees* (L. R. 7 App. Cas. at p. 276).

Referring to the judgments of Lord Cranworth and Lord Chelmsford in that case Lord Selborne further said—"Both these noble and learned lords agreed that the damage by loss of custom, of which the plaintiff complained, was a consequence of the works of the railway company too remote and indefinite to bring it within the scope of any of the compensation clauses of the Acts."

It may be questioned, however, whether loss of custom or trade would not be within the scope of this clause, and whether the Indian Legislature by the addition of the words "or his earnings" have not intended that it should be so (see *post*).

"*At the time of the Collector's taking possession.*"—"These words" it has been held "must be taken to mean the time when the damage takes place and the right to compensation arises, and it is sufficient to bring a case within this provision, if, when possession is taken there is other property or earnings injuriously affected, so as to cause some damage to the person interested:" *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. at p. 353).

The meaning of this, though it is far from clear, probably is that the time of taking possession is the time from which the damage is to be reckoned. This must be so, for until possession is taken the projected works, from which the anticipated damage may arise, cannot be commenced, nor can a proper estimate of the injury be formed. The same expression is used in the previous clause (see under cl. 3).

"*By reason of the acquisition.*"—That is to say the injurious affection must be the natural consequence of the acquisition, otherwise there would be no right to compensation under this head.

This, moreover, is in accordance with the English principles of compensation. "It has been again and again decided that no compensation could be sought except for injuries that might be occasioned by what was done under the powers conferred by the Legislature upon any bodies of persons:" *per* Lord Campbell, L. C., in *Imperial Gaslight and Coke Co. v. Broadbent* (7 H. L. C. 600).

"This statutory tribunal is only established to give compensation for losses sustained in consequence of what the railway company may do lawfully under the powers which the Legislature has conferred upon them, and that for anything done in excess of those powers, or contrary to what the Legislature in conferring those powers has commanded, the proper remedy is a common law action in the common law courts:" *per* Lord Campbell, L. C., in *Caledonian Railway Co. v. Colt* (3 Macq. H. L. 833). And see *per* Cockburn, C. J., in *Holt's Case*, and *per* Lord Watson in *Cowper Essex's Case* (*ante* under cl. 3).

It may further be presumed that the words "by reason of the acquisition" mean 'by the act of acquisition.' The words of the Land Clauses Act (sec. 68) are "by the execution of the works," under which it has been held that the injurious affection must be due to the construction and not the user of the works.

If these conclusions be correct, it is clear that the 'act of acquisition' would cover both the construction and the anticipated use of the works, but not the actual use of them, while the English decisions would apply to Indian cases.

No doubt a contrary view has been expressed in *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. at pp. 352-3) ; see under cl. 3, *ante*.

" *Person interested*."—See sec. 3(b), *ante*.

" *Collector taking possession*."—See ss. 3 (c), 16, 17.

" *Land*."—See sec. 3 (a).

" *The acquisition*."—This includes "the purpose for which the land is taken as well as the actual taking:" *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. p. 353).

" *Injuriously affecting in any other manner*."—This means apart from the damage caused by severance, which the previous clause provides for.

'Injuriously affecting' is only another term for damaging. It does not mean injuriously affecting by way of violation of any legal right. An owner is to be compensated for any damage done to his other land: *per* James, L. J., in *Ripley v. Great Northern Railway Co.* (L. R. 10 Ch. App. p. 437).

'Injuriously affected' means depreciated in value: *per* Lord Chelmsford in *Duke of Buccleuch v. Metropolitan Board of Works* (L. R. 5 H. L. p. 460).

"When the Acts use the term 'injuriously affected,' the word 'injuriously' does not mean 'wrongfully' or 'unlawfully.' The words mean 'damnously affected' only:" *per* Lord Westbury in *Ricket v. Metropolitan Railway Co.* (L. R. 2 H. L. at p. 202).

" *Other property, moveable or immovable*."—The corresponding expression in the previous clause is 'other land' (see cl. 3).

Where an owner of land had constructed reservoirs for the express purpose of supplying water to mills which were proposed to be erected, and a large portion of the land was acquired by a railway company, it was held that it necessarily followed that the value of the reservoirs was affected by the acquisition, and that he was entitled to be compensated for the loss: *Ripley v. Great Northern Railway Co.* (L. R. 10 Ch. App. 435).

On the other hand where the 'injurious affection' complained of consisted of the 'anticipated damage from the noise and smoke of trains,' it was held that this was not a proper subject of estimate for compensation. "The Legislature having given no power to the promoters to annoy the occupiers of neighbouring property with smoke, an injury from this cause is not the subject of compensation, but a ground of action:" *per* Lord Chelmsford in *City of Glasgow Union Railway Co. v. Hunter* (L. R. 2 H. L. 78).

And again, where a railway company constructed a level crossing on a public road leading to the owner's residence, and within a few yards of it, thereby causing him and his visitors considerable inconvenience by the constant closing of the gates and the passing of trains, it was held by the House of Lords that such annoyances did not constitute a ground for compensation: *Caledonian Railway Co. v. Ogilvy* (2 Macq. H. L. 229).

This was followed in a later case where it was held that the inconvenience caused by the construction of a level-crossing on a public road was no ground for compensation: *Wood v. Stourbridge Railway Co.* (16 C. B., N. S., 222).

And so also where a strip of land was acquired for the purpose of widening a street for the construction of a tramway, though no tram-line was actually laid on it, it was held that the occupant of a house from which the land was taken was not entitled to compensation under the Act for the inconvenience which he shared with every other dweller in the street "from the running of trams along a public highway:" *Rex v. Mountford* ([1906] 2 K. B. 814).

Where the owner of land on which a bridge was constructed by a District Board was also the proprietor of an adjoining ferry which had existed for many years previously, but ceased to exist when the bridge was constructed, it was held that the owner was entitled under this clause to compensation for the loss of his ferry, even although the bridge had been constructed before the land was acquired, the acquisition being regarded as relating back to the time when possession of the land was taken: *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. 346). See also *Rameswar Singh v. Secretary of State* (34 Cal. 470), under *sec. 24, cl. 3, post.*

The decisions in these two cases are directly and expressly opposed to the ruling in *Hopkin's Case*, in which the facts were

very similar. There a railway company, under their statutory powers, constructed a bridge half a mile above an ancient ferry. Passengers who were in the habit of using the ferry came to use the railway bridge, with the result that the traffic by the ferry fell off, and it had to be discontinued. It was held by the Court of Appeal that the owners of the ferry were not entitled to compensation for two reasons : (1) because an action could not have been maintained for disturbance of the ferry in respect of the traffic by the bridge, if it had been erected without the authority of an Act ; and (2) because the loss was due, not to the construction, but to the working of the railway, and that therefore, the ferry had not been ' injuriously affected ' within the meaning of the Act : *Hopkins v. Great Northern Railway Co.* (L. R. 2 Q. B. D. 224).

On the other hand where a railway company by the construction of a line along the river bank cut off the access to an ancient ferry it was held that the owner of the ferry was entitled to compensation for the physical interference with a private right : *Queen v. Great Northern Railway Co.* (14 Q. B. 25).

There is an obvious difference between the disturbance of a ferry by the construction and use of a bridge across a river, whereby the traffic is diverted and its profits diminished—a *damnum absque injuria*—which would not give rise to an action, and the physical interference with its approaches by the construction of a line along the bank, which is the invasion of a right, or *injuria*, and actionable.

Where a piece of land was taken out of a tea garden for the construction of a rifle range near a cantonment, for the use of troops, and there was evidence to show that the rifle range would interfere with the working of 8 acres of land behind the butts—for no prudent owner would put his coolies there while firing was going on—it was held that he was entitled to compensation for the injurious affection of his other property : *Wernicke v. Secretary of State* (13 C. W. N. p. 1060).

Conversely, where a volunteer corps had taken a lease of land for the construction of a rifle range, and some of their land, which lay beyond the butts, was compulsorily acquired by a gas company for the purpose of making a road to their works with the result that the rifle range could no longer be safely used, and had to be closed, it was held that the volunteer corps were entitled to compensation not only for the land actually taken, but also for the injurious affection to the rifle range. " By taking the land which

they have taken the company have rendered the possibility of using that which is left for the purpose of a rifle range impossible, and so have altogether depreciated the value of that which is left, because it was as a shooting range that its principal value accrued :” *per* Cockburn, C. J., *Holt v. Gas Light and Coke Co.* (L. R. 7 Q. B. 728).

Where a railway company made a level-crossing over a private road which gave access to the owner’s house, it was held that he was entitled to compensation for the damage which he could show he had sustained thereby to his other property ; *Madhusudan Das v. Collector of Cuttack* (6 C. W. N. 406). See also *Taylor v. Collector of Purnea* (14 Cal. 423), and *Guru Das v. Secretary of State* (18 Cal. L. J. 244).

Similarly, where a piece of land was occupied by a cotton mill, and some of it was acquired by a railway company for the construction of a railway, with the result that by reason of its proximity to the mill and the risk of fire the premises became more difficult to insure and of less value to a purchaser, it was held that the owner of the cotton mill was entitled to compensation for the injurious affection : *In re Stockport, Timperley and Altrincham Railway Co.* (33 L. J., Q. B., 251).

“ *Or his earnings.* ”—A clause expressly providing for the injurious affection of an owner’s ‘ earnings ’ is an innovation on the English Act, which contains no specific provision of this sort. This expression would presumably cover such terms as ‘ loss of business ’ or ‘ goodwill ’ and ‘ loss of profits,’ which though well-recognised subjects for compensation, must, under the Lands Clauses Act, be included in the award. “ The goodwill of a business is certainly not mentioned in the statute specifically, but it is not denied that the words of the statute are sufficiently large to include a claim for the goodwill of a business carried on in the premises that are taken under it :” *per* Cleasby, B., in *White v. Commissioners of H. M.’s Works* (22 L. T., N. S. p. 593).

“ Loss of profits by loss of business is a loss to the goodwill of the premises, and the goodwill is part of the value of the property : ” *per* Lord Westbury, in *Ricket v. Metropolitan Railway Co.* (L. R. 2 H. L. p. 205).

But when the goodwill of a business is purely personal to the owner no compensation should be given. “ Goodwill is a word of which few people understand the meaning. The goodwill which attaches to a particular house increases the value of that house. For instance, there is a well-known public-house, and from it

sition being well-known people frequent it, the goodwill attaches to the house and adds to its value. But there may be other kinds of goodwill attaching to personal reputation which a man has made for himself. That is a thing personal to the man whose skill and whose name have acquired that goodwill :” *per* Cotton, L. J., in *Worper v. Metropolitan Board of Works* (L. R. 25 Ch. D. p. 479); and see *per* Lord Macnaghten in *Commissioners v. Muller & Co.’s Margarine, Ltd.* (L. R. [1901] A. C. p. 223).

Again, even if the goodwill attached to a particular house which is acquired, the removal of the owner of the business to another house in the vicinity would hardly create any appreciable damage. It is as though a house in a street were taken where a man carried on business, and there were other houses in the same street to be had, to which the business could be transferred with no loss of goodwill. In such a case no compensation for goodwill ought to be given. If the rent was greater, that ought to be compensated for; if the lease were shorter, that ought; and if other circumstances of loss or precariousness, they ought :” *per* Lord Bramwell, in *Waddell v. North Staffordshire Railway Co.* (L. R. 4 Q. B. D. p. 432).

And so where a solicitor lived and carried on business in a house at Greenwich, which, on its being acquired he was compelled to vacate, and compensation was claimed by him on the ground of loss of business profits occasioned by the removal, it was held that, though such loss might be the natural effect of moving if he had been compelled to move a mile away, inasmuch as he had only moved to another house in the same street there did not seem to be much loss : *Queen v. Scard* (10 T. L. R. 545).

“ If the acquisition injuriously affects the earnings of the person interested he is to obtain further compensation beyond the market value of the land. But no compensation is given to persons not interested in the land, on the ground that their earnings may be affected by the change of ownership, or indeed on any ground. Peasantry are no more interested in the land than a ploughman; a digger is interested in the land on which he works for wages. It is not their earnings the earnings of the Zemindar who is interested :” *Secretary of State v. Shanmugaraya Mudaliar* (L. R. 20 A. p. 88).

Where a fisherman had a yearly lease of two tanks, at a rental of Rs. 125, and made a living by catching fish therein, it was held at Calcutta, that he was a ‘ person interested,’ in the land, and that such his earnings were injuriously affected by the acquisition,

within the meaning of this clause: *Narain Chandra Boral v. Secretary of State* (28 Cal. 152). But with due respect to the Judges who decided that case it may be doubted whether, in view of the lucid interpretation of the Privy Council, the clause is applicable to such a case.

Moreover, the plain terms of the section and the general scheme of the Act would seem to indicate that the provision is intended to be limited to cases in which the owner of property which is acquired is allowed to claim "further compensation beyond the market-value of the land," when his earnings are injuriously affected. See also under cl. 5, *post*.

A distinction is to be observed between the damage provided for by this clause to property which is left out of the acquisition, and the damage referred to in sec. 24 cl. (4) which may affect the property acquired. The former is a subject for compensation while the latter is not (see sec. 24 cl. (4), *post*.)

A claim for compensation for 'injurious affection' is not a claim to damages for a wrongful act, but for an act which is done in the lawful exercise of statutory powers, and as such is capable of assignment: *Dawson v. Great Northern and City Railway Co.* ([1905] 1 K. B. 260).

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

COMMENTARY.

Cf. Act X of 1870, sec. 24 (4). *Cf.* also 8 & 9 Vic., c. 18, s. 63.

This provision embodies another well-known principle of Compensation, which, although not specifically mentioned in the Lands Clauses Act, is nevertheless recognised by the Courts. It is closely connected with the principle of compensation for loss of 'earnings,' which is provided for in the previous clause, for the one is frequently dependent on the other. A company, "claiming to take land by compulsory powers, expel the owner from his property, and are bound to compensate him for all the loss caused by the expulsion, and the principle of compensation then is the same as in trespass for expulsion; and so it has been decided in *Jubb v. Hall Dock Co.* (9 Q. B. 443). There a brewery had been taken by the defendants,

and the plaintiff claimed to be compensated for the loss of his business as a brewer, and the Court held that he was so entitled, expressly on the ground that the premises had been taken :'' *per* Erle, C. J., in *Rickets v. Metropolitan Railway Co.* (34 L. J., Q. B., at p. 261).

In *Jubb's* case compensation was given for the loss he would sustain by reason of the interruption to his business from the time he parted with his premises until such time as he could obtain another building suitable for carrying it on.

The costs incidental to removal have been held to cover the value of an unexpired lease in the case of a tenant from year to year : *Reg. v. Commissioners of Rochdale Improvement Act* (2 Jur. 861).

"If the rent was greater, that ought to be compensated for ; if the lease were shorter, that ought ; and if other circumstances of loss or precariousness, they ought :'' *per* Lord Bramwell in *Bidder v. North Staffordshire Railway Co.* (L. R. 4 Q. B. D. p. 434).

Reasonable expenses incurred in transit would, it is presumed, be also included in the compensation awarded : see Cripps, 'Law of Compensation', p. 106.

Sixthly, the damage (if any) *bonâ fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

COMMENTARY.

This is a new provision which, like the second clause, was rendered necessary by the alteration of the time at which the market-value of the land has to be assessed (see *ante*). It is intended to provide for a contingency arising in the interval between the 'declaration' and the taking of possession, which might for any reason be delayed (see Preliminary Report, cls. 4, 7, *Appx. D*).

The owner of a house would be entitled under this clause to damages for loss of rent during the period stated if he were unable to let his premises : *Government v. Dayal* (9 Bom. L. R. p. 112).

"*Land*."—See sec. 3(a), *ante*.

"*Collector*."—See sec. 3(c).

"*Taking possession*."—See ss. 16, 17, *ante*.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

COMMENTARY.

Cf. Act X of 1870, sec. 42.

Sub-sec. (2).—The statutory allowance of 15 *per cent.* over and above the market-value of the land, which is to be given in consideration of the compulsory nature of the sale, was also intended to compensate the owner for his disinclination to part with his property, a factor which has to be left out of consideration in estimating the compensation (see s. 24(2)). This, it was thought, was more of a sentimental than a real grievance, but yet could hardly be altogether ignored (see Introduction).

"Fifteen per centum for compulsory acquisition are to be added only to the market-value of the land, and not to that part of the compensation which may be payable under the other heads:" *In re Esufali Salebhai* (10 Bom. L. R. 994).

But trees which were on the land when the declaration under sec. 6 was published are included in the market-value of the 'land,' as being 'things attached to the earth,' and the statutory allowance is to be added to the whole: *Sub-Collector of Godavari v. Seragam Subraroyadu* (30 Mad. p. 153).

"*Market-value.*"—See cl. (1), *ante*.

"*Court.*"—See sec. 3(d). The Collector must also observe this rule when assessing the amount of compensation: see sec. 15.

"*Land.*"—See sec. 3(a).

When land is acquired under the Calcutta and Bombay Improvement Acts the additional allowance of fifteen *per cent.* is not to be made. For the modifications of this section introduced by those Acts, see *Appx. A & B, post*.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

COMMENTARY.

Cf. Act X of 1870, sec. 25. *Cf.* also Ben. Act V of 1911, Sch.¹ and Bom. Act IV of 1898, Sch.

This and the previous section comprise, in a condensed form, the main principles of the law of Compensation, as applicable to India : see under sec. 23. There are seven matters to be left out of consideration.

First, the decree of urgency which has led to the acquisition ;

COMMENTARY.

Cf. Act X of 1870, sec. 25 (1).

This embodies another principle of the English law of Compensation, though it is somewhat differently stated. The meaning appears to be that in assessing compensation any special value which may attach to the land which is sought to be acquired, arising out of the necessity for its acquisition, is to be disregarded. It is thus closely connected with a similar provision in cl. 5 (*post*).

The principle on which this provision is apparently based is thus stated :—"The purpose for which the promoters intend to use the land is not such a use as can be considered in estimating the potential value, when that value is created or enhanced simply by the act or scheme of the promoters : " Lord Halsbury's 'Laws of England,' Vol. VI, p. 38.

In other words the purpose of the acquisition, so far as it affects the value of the land taken, is entirely outside the scope of the assessment.

Secondly, any disinclination of the person interested to part with the land acquired ;

COMMENTARY.

Cf. Act X of 1870, sec. 25(2).

This, it was thought, was more a sentimental than a real grievance, but the Legislature, being unwilling to ignore it altogether, provided an additional allowance of 15 *per cent.* on the market-value of the property, by way of compensation : see under sec. 23(2).

"*Land*."—See sec. 3(a).

"*Person interested*."—See sec. 3(b).

"In making the acquisition the wishes of the owner are wholly irrelevant under the Act. It does not contain any provision for any objection on the part of the owner to the acquisition itself. All his objections are limited to the amount of compensation and matters connected therewith:" *Ezra v. Secretary of State* (30 Cal. p. 74).

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

COMMENTARY.

Cf. Act X of 1870, sec. 25 (3). *Cf.* also 8 & 9 Vic., c. 18, s. 68.

The object of this provision, which embodies one of the English principles of Compensation, was "to exclude vexatious claims which might be made on account of trifling inconveniences caused during the progress of the works." It is in accord with the principle laid down by the English courts "that unless something was done which would be actionable if done by a private person there was no right to compensation" (see Introduction).

"*Sustained by him.*"—That is by the 'person interested' in the land : see sec. 3(a), (b).

The English principle was enunciated by Lord Chelmsford, L. C., in the following terms:—"I think that the criterion of a party's right to damages is correctly stated by Lord Campbell in *Re Penny* (7 E. & B. p. 669), and that, in his words, 'unless the particular injury would have been actionable before the company had acquired their statutory powers it is not an injury for which compensation can be claimed.' At the same time the observation of Lord Cranworth in the case of *Caledonian Railway Co. v. Ogilvy* (2 Macq. H. L., Sc. 235) must not be lost sight of, that it does not follow that a party would have a right to compensation in some cases in which, if the Act of Parliament had not passed, there might have been not only an indictment but a right of action:" *per* Lord Chelmsford, L. C., in *Ricket v. Metropolitan Railway Co.* (L. R. 2 H. L. at p. 187).

"Both principle and authority seem to me to show that no case comes within the purview of the statute unless when some damage has been occasioned to the land itself, in respect of which, but for the statute, the complaining party might have maintained an action:" *per* Lord Cranworth (*Id.* at p. 198).

In affirming the views enunciated in this case the House of Lords further expounded the same principle on a later occasion as follows :—" The proper test is to consider whether the act done in carrying out the works in question is an act which would have given a right of action if the works had not been authorized by Act of Parliament : " *per* Lord Cairns, L. C., in *Metropolitan Board of Works v. McCarthy* (L. R. 7 H. L. at p. 252).

And again, " There are many things which a man may do on his own land with impunity, though they seriously affect the comfort, convenience, and even pecuniary value which attach to the lands of his neighbour. In the language of the law these things are '*damna absque injuria*,' and for them no action lies : " *per* Lord Penzance (*Id.* at p. 262).

" No public works of any description whatever could be carried into execution if the whole of the public were to be entitled to pecuniary compensation by way of damages in respect of injury they might have sustained. Neither has Parliament so intended any such consequence to follow. But I believe the rule to be a sound one, that wherever an action might have been brought for damages if no Act of Parliament had been passed, the case is brought within the class of cases in which the property is ' injuriously affected ' within the meaning of the Act : " *per* Lord Hatherley (*Id.* at p. 260). And see also *City of Glasgow Union Railway Co. v. Hunter* (L. R. 2 H. L., Sc. 78) ; *Beckett v. Midland Railway Co.* (L. R. 3 C. P. 82) ; *Chamberlain v. West End of London, etc., Railway Co.* (2 B. & S. p. 615) ; *Glover v. North Staffordshire Railway Co.* (16 Q. B. p. 923).

It has been held, however, that the rule that ' compensation can only be given for that which unless sanctioned by the statute would otherwise have been an actionable wrong ' has no application to cases where the act complained of was done on claimant's own land which has been taken from him by force of the statute : *In re Stockport, Timperley and Altrincham Railway Co.* (33 L. J., Q. B., 251).

The decision in the *Stockport Case* has been approved by the House of Lords, notably in the case of *Cowper Essex* (14 A. C. 153), where Lord Fitzgerald observed (p. 173). " That case has been the subject of much adverse criticism, but it has not been overruled, and up to the present moment the rule laid down by it has regulated right and liability in similar cases." It is therefore a well-recognised authority in England.

The Indian Legislature, however, have, by the introduction of this provision, made the rule in question expressly applicable to all cases in which land is acquired under the Act without restriction. It is therefore difficult to see how the principle laid down in the *Stockport Case* could be applied in India, in the face of an express provision such as this. It has, nevertheless, been applied in the case of *Collector of Dinagepore v. Girja Nath Roy* (25 Cal. 346).

In this case compensation was allowed under the Act to the owner of a ferry which was alleged to have been injuriously affected by the construction of a bridge, although the bridge had been erected before any land was acquired, and the ferry itself was not within the boundaries of the land which was taken. In addition to this it was contended that the damage was not such as would give rise to an action against a private person in a civil court, though this was not expressly conceded. In a later case, however, of a similar character, in which the earlier decision was followed, this was expressly conceded. The following passage from the judgment may be referred to :—" It appears to be quite clear that no damages can be claimed on account of losses sustained by reason of the construction of the railway bridge : " see *Rameswar Singh v. Secretary of State* (34 Cal. p. 487). This would certainly seem to be within the scope of this clause.

Both these decisions are directly opposed to the ruling of the English Court of Appeal in the case of *Hopkins v. Great Northern Railway Co.* (L. R. 2 Q. B. D. 224), where the facts were remarkably similar. It was held in that case that the owners of a ferry were not entitled to compensation under the Act because an action could not have been maintained for disturbance of the ferry in respect of the traffic by the bridge, if it had been erected without the authority of an Act. See also under sec. 23, cl. 4, *ante*.

This provision, moreover, is subject to the common law rule that the damage must not be too remote. It has been held that " the damage complained of must be one which is sustained in respect of the ownership of the property—in respect of the property itself, and not in respect of any particular use to which it may, from time to time be put, in other words, it must be a damage which would be sustained by any person who was the owner, to whatever use he might think proper to put the property : " *per* Willes, J., in *Beckett v. Midland Railway Co.* (L. R. 3 C. P. at p. 94).

Fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

COMMENTARY.

Cf. Act X of 1870, sec. 25 (4).

This provision, which embodies an English principle of Compensation is intended to exclude from consideration any damage which is "likely to be caused by or in consequence of the execution of the proposed work." It is in accord with English authorities which have laid down "that the jury had no right to assess prospective or future damages caused by a work, since the extent of damages could not be ascertained till after the damage had been actually inflicted." Such damages would be purely speculative (see Introduction).

"To the land acquired."—These words have been added to make it clear that the damage which is to be excluded from consideration is "only a possible depreciation of the acquired land itself, from the use to which it will be put." This provision in no way interferes with the right of a 'person interested' to obtain compensation under sec. 23 (1) cl. (4) (*ante*), for damage done by the acquisition to his other property which has not been acquired (see Second Report, cl. 15, *Appx. D*).

"After the date of the publication of the declaration."—These words have been substituted for 'after the time of awarding compensation,' which existed in the previous Act. In making this alteration the Legislature have apparently overlooked the confusion that arises from the retention of the words 'likely to be.' At the time when the Court is to consider its 'award' the 'declaration' under sec. 6 is a past event, and the damage referred to either has, or has not, been caused. It is no longer a question of likelihood. As the clause stands it is difficult to say whether the Court is intended to disregard the damage which may have accrued in the interval between the date of the 'declaration' and the time of making its 'award,' or (as provided in the original clause) the damage which is likely to arise in the future after the acquisition has been completed, or both. No change has been made in the next two clauses, and it is clear that they are intended to provide against prospective damage only.

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

COMMENTARY.

Cf. Act X of 1870, sec. 25(5). *Cf.* also Ben. Act III of 1915, sec. 9.

This clause embodies a principle of the English law of Compensation, though it is said to have been taken from the French law. It will be observed that no alteration as regards time has been made in this clause. It may be presumed, therefore, that in cl. 5 the prospective increment intended is to be estimated as from the time of acquisition. See cl. 4.

"*Value of the land.*"—This presumably means 'market-value': see sec. 23(1), cl. (1), *ante*. But the terms appear to be used indiscriminately throughout the Act, there being no real difference between them (see under s. 23).

"It is a recognised principle to exclude from the assessment of compensation any enhancement or diminution in value consequent on the construction of works authorized by the Act under which the assessment is made:" Cripps, 'Compensation,' p. 104.

"The purpose for which the land is taken should not be taken into consideration, for if it were so, the public would be purchasing, as it were, its own improvements:" *Wernicke v. Secretary of State* (13 C. W. N. p. 1049). See also *Secretary of State v. Charlesworth, Pilling & Co.* (L. R. 28 I. A. 121).

"The plaintiff's interest is not to be treated as having been increased through an act of the Board of Works. It is not the interest which has been acquired by the Board that has to be estimated, but the value of the interest taken from the person with whom the Board deals:" *per* Wood, V.-C., in *Penny v. Penny* (L. R. 5 Eq. 227).

And so where a claim was made on behalf of the rector of a parish in which were certain churchyards under his control, but otherwise of no pecuniary value to him, it was held that he was not entitled to compensation on the basis of the purpose of the acquisition. "It was in his hands practically valueless. He can have no claim to have a new value attached to that which was before valueless, merely because the Legislature has said it shall be transferred from one public purpose to another. There is nothing to be found in the Act to support the plaintiff's contention, nor is

it founded on reason. It is intended that he shall be compensated to the extent of his loss, and that his loss shall be tested by what was the value of the thing to him, not by what will be its value to the persons acquiring it : " *per* Cockburn, C. J., in *Stebbing v. Metropolitan Board of Works* (L. R. 6 Q. B. pp. 41-2).

Although any enhancement of the value of the land due to the purpose for which it is acquired must be disregarded in assessing the compensation, this will not prevent the consideration of the natural adaptability of the land for a particular purpose, whether that be the purpose of the acquisition or not : *per* Lord Alverstone, C. J., in *In re Gough and Aspatria &c.* ([1904] 1 K. B. pp. 420-3).

Nor would the application of this principle affect the assessment of some latent element of value which had remained undiscovered until the moment of valuation. " If after the notice to treat, and before the assessment, some inherent value in the land is discovered, which was neither expected nor discovered at the time of giving the notice to treat, that circumstance would properly be taken into consideration, because it was, although unknown, a fact existing at the date of the notice to treat which affected the value of the property : " *per* Vaughan Williams, L. J., in *Bwlfa and Merthyr Dare Steam Collieries Ltd. and Pontypridd Waterworks Co., In re* ([1902] 2 K. B. p. 140).

As to the operation of this rule in questions of ' special adaptability ', see *per* Lord Moulton in *Lucas's Case* under sec. 23(1), cl. 1, *ante*.

Sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or,

COMMENTARY.

Cf. Act X of 1870, sec. 25(6).

This clause likewise embodies a principle of the English law of Compensation, although, like the previous one, it is said to have been taken from the French law.

It is difficult, at first sight, to see the object of excluding from consideration any prospective increase in the value of the land which is *not* acquired, for it is only the market-value of the acquired land which has to be determined, and that, it is presumed, cannot be affected by anything which is likely to happen to the

other land after the acquisition. The object of the provision, however, appears to be to prevent any claim being made by way of set-off on this account, where a claim has been made by the owner for injurious affection to his other land. It has been held in England that a company is not entitled to set off any benefit which the owner may get by the acquisition against any damage which he sustains by severance or otherwise.

"It seems to me that such a set-off ought not to be allowed, since it would lead to such absurd consequences. Suppose a man has two neighbouring houses, the one benefited, the other injured by the company's works, is he not to get compensation for the one that is injured because the other is benefited? I cannot accede to the proposition that any benefit done by the company to the premises must be deducted by way of set-off against the damage:" *per* Bramwell, B., in *Senior v. Metropolitan Railway Co.* (2 H. L. C. at p. 268).

So also, where a railway company had, under statutory powers erected certain works whereby the access of light to adjoining premises was obstructed, it was held that the owner was entitled to compensation for the injurious affection, notwithstanding the fact that all property in the neighbourhood had increased in value and that, in consequence, the loss was counterbalanced by the improvement. It was no answer to the claim that by reason of accidental circumstances the saleable value of the premises was not diminished: *Eagle v. Charing Cross Railway Co.* (L. R. 2 C. P. 638).

"Person interested."—See sec. 3(b), *ante*.

Seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 6.

COMMENTARY.

Cf. Act X of 1870, sec. 25 (7).

The object of this provision is to prevent any outlay on the land being made for the purpose of enhancing the compensation (see Introduction). It is also intended to provide for the allowance

of compensation, as was afterwards explained, for any outlay on works commenced, but not completed, at the time of the publication of the declaration, provided the sanction of the Collector is obtained for their execution or completion. It insures the *bond fides* of the outlay by imposing the condition of the Collector's sanction.

"Land."—See sec. 3(a), *ante*.

"Collector."—See sec. 3(c).

"Disposal of the land acquired."—"The owner's power of dealing with his property is concluded when the notice to treat is served, and a lease granted subsequently to that period cannot properly be compensated for:" *per* Lord Romilly, M. R., in *Ex parte Edwards* (L. R. 12 Eq. at p. 391). This is a well-known principle of the law of Compensation.

"The broad principle appears to be that it is not competent for an owner of land who has received notice to treat to deal with any of his land either taken or injuriously affected by the company, so as to increase the burdens of the company as regards the compensation to be made in respect of such land or any of it:" *per* Lord Lindley in *Mercer v. Liverpool, St. Helen's, and South Lancashire Railway* ([1904] A. C. at p. 465).

"It must be regarded as a settled rule of law that there can be but one proceeding for compensation, and that after notice to treat no onerous interest, either in the land taken or in that injuriously affected, can be created by the owner to the prejudice of the company:" *per* Mathew, L. J., in *Mercer v. Liverpool, St. Helen's, and South Lancashire Railway Co.* ([1903] 1 K. B. at p. 667).

It is presumed that the Legislature intended by the use of this expression to embody the English principle in the section. If this be so, any transaction such as a lease or a mortgage, effected after the publication of the declaration, would not be valid unless sanctioned by the Collector. If it were effected after possession had been taken under sec. 16, it would be void *ab initio* (see under sec. 16, *ante*).

For the modifications introduced by the Calcutta and Bombay Improvement Acts in to this section (cls. 6 and 7), see *Appx. A, B, post*.

A new section (24A), has been framed for Calcutta by Ben. Act V of 1911.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

Rules as to amount
of compensation.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

COMMENTARY.

C/. Act X of 1870, sec. 26.

Sub-sec. (1).—A claim to compensation tendered to the Collector under sec. 9 may be made in writing, if he so directs, or otherwise, but it is important that the statement should be carefully made, for the amount cannot be enhanced beyond the figure stated. On the other hand if the claim be too extravagant the applicant may be mulcted in costs under sec. 27.

The applicant may, however, on a Reference question the amount of the award by the Collector (if it be less than the amount of his claim), the manner of payment, and the method of apportionment (see sec. 18).

If a 'person interested' has not agreed to accept the Collector's 'award' he must be taken to have made a claim within the meaning of sec. 25: *Nabin Chunder Sarma v. Deputy Commissioner of Sylhet* (1 C. W. N. p. 564).

"Pursuant to any notice given under sec. 9."—This means that the claim must be made within the period specified in the notice. A claim put forward after the Collector had completed his 'award' would not comply with this section: *Secretary of State v. Gobind Lal Bysak* (12 C. W. N. 263). See also *Secretary of State v. Bishan Dat* (33 All. 376).

"*Less than the amount awarded.*"—This means 'less than the total sum allowed,' by the Collector. If the Collector has set out his valuation under different heads, the Judge is at liberty to alter the various items of compensation, so long as the total of his assessment is not less than the Collector's total: *Gangadara Sastri v. Deputy Collector of Madras* (22 Mad. L. J. 379).

Sub-sec. (2).—Unless a claim has been duly made, or its omission excused, a claimant, presumably, has little to gain by a reference.

"*The amount awarded by the Collector.*"—That is to say to the applicant himself.

"*To be allowed by the Judge.*"—This means 'which the Judge allows.' 'Judge' and 'Court' are interchangeable terms.

When a Judge allows a claim the section intends that he should express his reasons for doing so, in order that the Appellate Court may know if the reasons were sufficient or not. A Judge has no power to increase the amount of the Collector's 'award' unless the claimant satisfies him that he had sufficient grounds for omitting to make his claim in due time. This is a matter which affects the merits of the case as well as the jurisdiction of the Court, and is therefore not covered by sec. 578 (sec. 99), C. P. C.: *Secretary of State v. Gobind Lal Bysak* (12 C. W. N. 263). See also *Secretary of State v. Bishan Dat* (33 All. 376).

"*Collector.*"—See sec. 3 (c). *ante*.

"*Court.*"—See sec. 3 (d).

Sub-sec. (3).—When a 'Judge' disallows a claim to compensation under this section the High Court may reverse the order in its appellate jurisdiction. Where a 'person interested' "did not agree to accept the amount of compensation offered" by the Collector, but withdrew his objection through his pleader on the Reference before the 'Judge,' it was held by the High Court that the appellant's admission did not preclude him, having regard to the circumstances, from claiming his proportionate share of the enhanced compensation awarded by the Judge: *Nabin Chunder Sarma v. Deputy Commissioner of Sylhet* (1 C. W. N. 562).

26. Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the

Forms of awards.

amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

COMMENTARY.

C/. Act X of 1870, sec. 34.

This section prescribes the form in which the award on a Reference under Pt. III must be made. The formalities to be observed by a Collector in framing his award are prescribed in Pt. II (secs. II-15), *ante*.

*“*Shall specify the amount awarded.*”—This is the dominant feature of an award, and it is appealable as a decree under sec. 54, *post*. It can thus be distinguished from mere orders of the Court which are not so appealable. The finding under sec. 23 (1), cl. 1, is most important, and must be separately stated, as it is on the ‘market value’ of the property that the allowance of 15 per cent. is to be reckoned.

The award is not chargeable with stamp-duty, and any one claiming under it may have a copy of it free of charge : see sec. 51.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

COMMENTARY.

Cf. Act X of 1870, ss. 32-34.

It will be observed that a much wider discretion is given to the Court in the matter of costs by this section than was allowed in the former Act. In framing it in its present form, the Legislature were conscious that the ordinary rules for adjudication of costs

in civil cases were unsuitable to proceedings under this Act, and modified the provision accordingly (see Preliminary Report, cl. 8 and Second Report, cl. 6, *Appx. D*).

Sub-sec. (1).—The costs are part of the award and may be the subject of appeal under sec. 54, *post*: *Ekambara Gramany v. Muniswamy* (31 Mad. 328).

"Proceedings under this Part."—That is to say the proceedings on a Reference. The only other costs which appear to be recognised under the Act are those incurred prior to taking possession when the Government withdraws from the acquisition under sec. 48.

Sub-sec. (2).—*"Collector."*—See sec. 3 (c).

"Negligent in putting his case before the Collector."—This means wilfully keeping back evidence in the proceedings before the Collector as to the value of the land in order to deploy it to greater advantage before the Judge (see Second Report, cl. 6, *Appx. D*).

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Collector may be directed to pay interest on excess compensation.

COMMENTARY.

Cf. Act X of 1870, sec. 42.

"Court."—See sec. 3 (d), *ante*.

"Collector."—See. sec. 3 (c).

"May direct."—The direction is not compulsory. When the Legislature has not made any particular rule of conduct imperative, but leaves the procedure to be followed under particular circumstances within the discretion of a Court or Judge, it is intended that a sound and reasonable discretion should be exercised, and not that the matter should depend on the caprice or fancy of the Court or individual in whom the discretion may be vested. When a Court of original jurisdiction exercises the discretion vested in it in an irregular and unreasonable manner, it is the duty of the

Appellate Court to rectify its erroneous procedure. If it refuse the relief which it has power to grant arbitrarily, and without assigning any good reason, it is the duty of the Court to which an appeal lies from its decision to correct the error which has been committed : *Pendse v. Malse* (3 Bom. H. C., A. C., p. 100).

"Discretion, when applied to a Court of Justice, means *sound* discretion *guided by law*. It must be governed by rule, not by humour ; it must not be arbitrary, vague, and fanciful, but legal and regular : " *per* Lord Mansfield in *R. v. Wilkes* (4 Burr. 2539).

"*On such excess.*"—That is to say, interest is "payable only on any addition which the Court may make to the amount of compensation tendered by the Collector," and that only from the date of possession to the date of payment into Court. Under the previous Act, there being no provision for payment of the compensation-money into Court, the Collector* had to pay interest on the whole amount, if his tender was refused. This obvious hardship was removed by the new rules introduced in sec. 31 (see Introduction). And see also sec. 34, *post*.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

COMMENTARY.

Cf. Act X of 1870, sec. 37.

Part IV, which purports to deal with the subject of apportionment, consists of two sections only, 29 and 30. The former provides for the case when all the parties agree as to their respective shares of the compensation-money, while the latter permits of a Reference by the Collector to the Court in the event of a

dispute. It is probable that both sections relate to the Collector's 'award' under sec 11. If the parties agree, the fact and the particulars are to be recorded in the award, and that concludes the matter.

"*Persons interested.*"—See sec. 3 (b).

"*As between such persons.*"—That is the persons who agree, which presupposes that they were present, either in person or by agent. They could hardly be said to 'agree in the apportionment', if they were absent.

"*Conclusive evidence.*"—See under sec. 6 (3), *ante*.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Dispute as to apportionment.

COMMENTARY.

Cf. Act X of 1870, sec. 38. *Cf.* also Act V of 1908 (C. P. C.), sec. 113.

This section provides an alternative procedure for the Collector in difficult cases. He may decide the question of apportionment himself, and complete his award under sec. 11, leaving parties who are dissatisfied to apply for a Reference under sec. 18. If they accept it he would doubtless record the fact under sec. 29. If they did not and the question was complicated, he might prefer to act under sec. 30, and refer it to the judgment of the Court, although he is not bound to do so.

This provision seems to be very similar to sec. 113 of the Code of Civil Procedure, which permits a Reference to the High Court for its opinion on a difficult point. The Court which makes the reference must, on receipt of the opinion or judgment of the superior Court, dispose of the case in conformity therewith (O. XLVI, R. 3). It may also be compared with the Reference which may be made under the Indian Stamp Act (II of 1899), Ch. VI, when questions arise of a difficult character, and where the same procedure is prescribed.

It is presumed that if a Collector referred a question of apportionment under sec. 30 he would do so before he completed his 'award' under sec. 11, for if not, he could not make a proper award in terms of that section. An 'award' would not be complete unless it contained a final adjudication on all the matters prescribed therein (sec. 11).

The Reference which a Collector may make of his own accord under sec. 30 has, of course, nothing to do so with the Reference which he is bound to make to the Court under sec. 18, after he has completed his award, at the instance of "any person interested who has not accepted the award" (see sec. 18).

The corresponding part of the previous Act (X of 1870, Pt. IV), contained further provisions (sec. 39) for the determination of the Reference by the Judge and for an appeal from his decision to the High Court. A reference under that Act was therefore of an entirely different character. In the first place the Reference was compulsory, and the Collector had no option in the matter. Secondly the Judge's decision was in the nature of an appealable decree.

The question whether it was an 'award' called forth conflicting views. In *Nilmonee Singh Deo v. Ram Bundhoo Roy* (4 Cal. at p. 760), it was held that the term 'award' did not include the decision of the Court under sec. 39. In *Balaram Bhramaratar Ray v. Sham Sunder Narendra* (23 Cal. at p. 530), the same High Court held that the term 'award' must include an order for apportionment by the Judge under this section, although it was admitted that "the Act has not defined the term 'award,' and the question may not be altogether free from doubt."

It is submitted that the earlier view is the correct one, and the Legislature would appear to have emphasised it by withdrawing the section entirely from the new measure, and by substituting therein the words "may refer" for "shall refer." The effect of this alteration is obvious. It makes the "decision of the Court" more like an opinion than a decree, leaving the Collector free to obtain it or not as he likes.

There are moreover no rules of procedure prescribed for the hearing of such a reference, nor are the provisions of Part III (ss. 18-28) made applicable, as they are under sec. 48 (3), *post*. This would favour the conclusion that a Reference under Part IV was intended to be *ex parte*, though there is nothing to prevent the Court from hearing the parties if it so desires. When a

Reference is made to the High Court under the Civil Procedure Code this is frequently done (see O. XLVI, R. 3).

And so where a Collector made a Reference under sec. 30, and a person interested was made on his application a party to the proceeding, the High Court declined to interfere. "To us it appears," they said. "distinctly in the interest of all that the questions which arise as to compensation to be paid for a piece of land taken up should be dealt with as far as possible at one and the same time :—" *Kishan Chand v. Jagannath Prasad* (25 All. 133). See also under sec. 35 (3), *post*.

"*When the amount of compensation has been settled.*"—It is difficult to say whether this means 'decided by the Collector' or 'accepted by the parties.' Probably the former meaning is the correct one, for, in view of sec. 12, it is of little consequence whether the parties appear or not, provided of course they have been served with notice of the proceedings.

"*Or any part thereof.*"—These words seem to be superfluous.

"*The persons to whom the same is payable.*"—See under sec. 3 (b), *ante*.

"*Collector.*"—See sec. 3 (c).

"*Court.*"—See sec. 3 (d).

"*May refer.*"—The words in the previous Act (X of 1870) were 'shall refer.' The alteration was made advisedly in order to give the Collector complete discretion in the matter. "The section allows the Collector to decide if he can, whilst it gives him an opportunity of shifting the decision to the Court, and also leaves the parties themselves free to go into Court if they are dissatisfied with the Collector's apportionment."

"*The decision of the Court.*"—It is to be regretted that after the exhaustive exposition of the principles of compensation contained in secs. 23 and 24, *ante*, no rules have been prescribed in the Act for the guidance of those who have to grapple with the intricacies of apportionment. These have to be gathered at random from the archives of judicial authority.

Under the previous Act (X of 1870, sec. 39), it was held that "it is the duty of the Judge, in apportioning compensation-money which he is directed to apportion to decide the question of title between all persons claiming a share of the money :—" *per Pontifex, J.*, in *Nobodeep Chunder Chowdhry v. Brojendro Lall Roy* (7 Cal. p. 407).

"There is nothing in the section to suggest that the Judge should not decide, as between rival claimants to compensation, all questions of title upon which their right to share in the amount, and the proportion to be awarded to them respectively, would depend:" *per* Edge, C. J., in *Husaini Begam v. Husaini Begam* (17 All. at p. 575).

"We should give the term 'apportionment' in Part iv a liberal construction, as including the case where the Court has to decide between rival claimants of the entire compensation. It is to be further remarked that all such disputes may end in an apportionment of the compensation:" *per* Sargent, C. J., in *Kashim v. Aminbi* (16 Bom. at p. 528).

"When the section talks about apportionment of compensation to the persons interested, it contemplates that there are various ascertained parties entitled to compensation, the only point being as to the mode in which compensation is to be rateably distributed among or between them:" *per* Straight, J., in *Kishan Lal v. Shankar Singh* (8 A. W. N. at p. 171).

"What the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests, and it is impossible to lay down any general rule which can be followed. The market-value of an interest, if ascertainable, may afford some guide towards ascertaining the amount to be apportioned in respect of that interest, but that can only be considered in relation to the total sum awarded as compensation:" *In re Pestonji Jehangir* (37 Bom. p. 79).

GENERAL PRINCIPLES OF APPORTIONMENT.

Landlord and Tenure-holder.—"The Court" ought to proceed on the principle of ascertaining what is the value of the interest of the zemindar on the one hand with which he has parted, and that of the tenant on the other, and to apportion the compensation-money between them according to those values:" *Dinendral Narain Roy v. Tituram Mukerji* (30 Cal. p. 810).

"The principle upon which the amount of compensation is divisible amongst the zemindar and the holders of several subordinate tenures, is clearly laid down in the case of *Sreenath Mookerjee v. Maharajah Mahatap Chand Bahadoor* (S. D. A., 1860, p. 326).

The principle is to ascertain the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest. In the absence of any special agreement, the valuation of the dur-putneedar's share may be determined according to the following illustrations :—

Supposing the total mofussil collections to be Rs. 100, the expenses of collection Rs. 10, Rs. 90 would remain as the net rental. Suppose the value of the particular species of property to be twenty years' purchase, the whole would be worth Rs. 18,000, which would be paid into Court. Suppose the dur-putneedar to pay as rent for the whole of his dur-putnee Rs. 1,500, the dur-putnee consisting of 500 beegahs, of which 10 are taken. Then as $500 : 1,500 :: 10 = 30$. Therefore the rental of the 10 beegahs taken is Rs. 30, of which amount the dur-putneedar would be entitled to a deduction from his rent payable to the putneedar. Then from the net back rental of Rs. 90, deducting the amount of abatement to which the dur-putneedar would be entitled, Rs. 30, there would remain Rs. 60, the value of which at twenty years' purchase would be Rs. 1,200, to which the dur-putneedar would be entitled :— *Gordon Stuart and Co. v. Maharajah Mohatab Chunder Bahadoor* (1 Marsh. 490).

The case referred to was a decision of the Sudder Dewany Adalat, in which the same principle was laid down, as follows :—
“ The zemindar and the putneedar are entitled to compensation in proportion to the losses which they respectively sustain from the appropriation of their lands, and to the remission of the rents which they pay respectively to the Government or the zemindar.”

“ In respect to remission, as the gross rental of the whole putnee is to the gross rent of the land proposed to be taken, so will the entire putnee rent be to the particular portion of the rent to be remitted ; and with regard to compensation—as the gross profits of the putnee are to the profits of the putneedar, so will the gross compensation be to the portion of the compensation the putneedar is entitled to recover. These formulæ are of universal application :—” *Sreenath Mukerjee v. Maharajah Mahatab Chand Bahadur* (S. D. A., 1860, pp. 335-6).

This principle, enunciated by the Sudder Dewany Adalat in 1860, was accepted without reservation by the High Court in 1863, in *Gordon Stuart's* case (*supra*), and again in 1865, in *Joy Kishen Mookerjee v. Reazoonissa Beebee* (4 W. R. 40). But in 1868, in a

later case, the rule was subjected to limitations. A doubt was raised as to its universal applicability. "It certainly would not," it was held, "provide for the case of several putnees, where the land is taken from the holder of the last tenure, and where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant:" *per* Peacock, C. J., in *Maharajah Mahatap Chand Bahadur v. Bengal Coal Co.* (10 W. R. 391).

The reason for this is that "where the grant of a permanent interest is made upon receipt of a considerable bonus, the landlord practically parts with the whole of his interest, save and except the small rent that is reserved:" *Maharajah Bir Chunder Manickya v. Nobin Chunder Dutt* (2 C. W. N. p. 454).

Where the land is held in 'putnee' the "proper mode of settling the rights of the parties is to give to the putneedar an abatement of his rent in proportion to the quantity of land which has been taken from him. It is not fair that he should be liable to pay the same rent when a part of the land has been taken away. This is in accordance with the principle laid down in the case of the *Maharajah of Burdwan*. This being so the zemindar ought to be compensated for the loss of rent which he sustains, and the money ought to be divided between the parties accordingly:" *per* Couch, C. J., in *Raye Kissory Dassee v. Nilcant Day* (20 W. R. p. 371). In this case the putneedar was compensated by an abatement of rent, and the zemindar received a sum equal to a little over 16 years' purchase of the rent abated.

In a later case it was held that where a putnee is acquired under the Act the putneedar is not only entitled to an abatement of rent but also to some compensation for his loss of profit, and that the zemindar is entitled to the capitalised value of the rent remitted as well as to some compensation for the chance of the property reverting to him: *Bhobani Nath Chuckerbutty v. Collector of Bogra* (7 C. W. N. 130). But where a zemindar had refused to abate the putnee rent he was held to be entitled to no part of the compensation: *Gunpat Singh v. Moti Chand* (18 C. W. N. 103).

"As regards the zemindar, it is a mistake to suppose that his interest in the land is confined entirely to the rent which he receives from the putnidar. He is the owner of it under the Government, and in the event of the putnee coming to an end by sale, forfeiture, or otherwise, the property would revert to the zemindar who might deal with it as he pleased in its improved state; and, although in some cases the chances of the putnee coming to an end may

be more or less remote, there is no doubt that in all cases the zemindar is entitled to some compensation (small though it be) for the loss of his rights :” *per* Garth, C. J., in *Godadthur Dass v. Dhunput Sing* (7 Cal. p. 589).

In commenting on the views enunciated above an opinion has been expressed by the same High Court, in a later case, that it would be extremely difficult to put a monetary value on such a chance ; although if it were susceptible of a money appreciation which could be supported by evidence, it ought to be taken into account. Subject to this limitation, the interest of the landlord could not be put higher than the fixed rent he receives and for which, as he loses it, he would be entitled to compensation of so many years’ purchase. The real beneficial owner is the tenure-holder and not the landlord, and the property is virtually his, subject to the payment of the rent : *per* Maclean, C. J., in *Dinendra Narain Roy v. Tituram Mukerjee* (30 Cal. 801). See also *Jogesh Chandra Ray v. Secretary of State* (18 C. W. N. 531).

And so where the land acquired was an alluvial accretion, the landlord was given the capitalised value of the rent payable to him for it, while the tenure-holder received the balance of the compensation : *Chooramoni Dey v. Howrah Mills Co.* (11 Cal. 696).

Where the claimants for compensation were the zemindar and a tenant for life or holder of a maintenance grant, the Privy Council thought that the “ division of the fund into halves a very reasonable way of dealing with it :” *Sri Braja Kisore Devu Garu v. Kundana Devi* (3 C. W. N. p. 381).

Where lands appertaining to a Ghatwali talook were acquired, and the claimants were the zemindar and the sub-tenure-holder or mokuraridar of the Ghatwal, it was held that the compensation-money should be divided between them in the ratio of their respective interests, *i.e.*, one-fourth to the former and three-fourths to the latter : *Bhageerath Moodie v. Jabur Jummah Khan* (18 W. R. 91). But in a later case the same High Court, under similar circumstances, held that the same zemindar was not entitled to anything, and that the Ghatwal, having only a limited interest for life, was only entitled to the interest on the compensation-money : *Ram Chander Singh v. Mahomed Jowhuruzumã Khan* (23 W. R. 376).

“ No general principle can be laid down applicable to every case as between zemindar and putneedar. The apportionment

between the zemindar and putneedar will depend partly on the sum paid as bonus for the putni, and the relation that it bore to the probable value of the property, and partly on the amount of rent payable to the zemindar, and also the actual proceeds from the cultivating tenants or under-tenants. It may occasionally happen that the zemindar receives an extremely high bonus, and is content with charging the property with the receipt of a very low rate of rent, or it may be that the bonus is almost nominal and the rent excessively high, and the zemindar depends not on the bonus and the interest of the amount so paid and invested in some other way, but on the amount paid periodically as rent. Consequently as between parties standing in these relations it is necessary to consider all these matters before any conclusion can be arrived at, as to their rights to any particular compensation : " *Bunwari Lal Chowdhry v. Burnomoyi Dasi* (14 Cal. p. 750). See also *Maharaja Bir Chunder Manickya v. Nobin Chunder Dutt* (2 C. W. N. 453).

" The relation of zemindar and putneedar may be taken as that of lessor and lessee." They are free to arrange between themselves how to divide the compensation-money in the event of an acquisition of the patni-land, and a proviso in the lease, to this effect, would be binding on the parties to the transaction : *Uma Sunkar Sirkar v. Tarini Chunder Singh* (9 Cal. 571).

A covenant in a lease providing that, in the event of the acquisition of the land for a public purpose, the tenant would make no claim to the compensation awarded for it is binding on him : *Gadadhar Bhatta v. Lalit Kumar Chatterji* (10 Cal. L. J. 476).

In proceedings for apportionment, when the permanency of the tenure is in issue, and there is no direct evidence on the point available, the principle involved in sec. 50 of the Bengal Tenancy Act (VIII of 1885), although not strictly applicable, is a useful guide for the Court in determining the question : *Nanda Lal Gossami v. Atarmoni Dassi* (12 C. W. N. 432).

When the rent of a tenure has not been altered for a period of nearly one hundred years there is a strong presumption as to the permanency of the tenure : *Dinendra Narain Roy v. Tituram Mukerjee* (30 Cal. p. 804).

If a tenant sets up a permanent tenancy at a fixed rent the onus is on him to prove it : *Rajah Kheller Kristo Mitter v. Kumar Dinendra Narain Roy* (3 C. W. N. 202).

Landlord and Tenant.—"The principle upon which the compensation-money in cases of this class ought to be apportioned as between the landlord and tenant is as follows :—First, the Court must ascertain the amount of rent payable to the landlord and capitalise that rent at so many years' purchase, the number of years' purchase depending upon the particular circumstances of each particular case. The landlord is at the outset entitled to that capitalised value, but I think he is entitled to something more. There is, or in many cases may be, the chance of an enhancement of the then existing rent ; he is entitled in my opinion to have the value of this chance of enhancement assessed, and to have a money value put upon it, and to take that money value out of the compensation awarded. It may in some, perhaps in many, cases be somewhat difficult to arrive at the true capitalised value to the landlord of this chance of enhancement, but it will be for the landlord who sets up such a claim to make it out and show what the true value is. I do not think the landlord can be entitled to anything more, nor have I heard it suggested that he can be. After thus providing for the claims of the landlord, the balance ought to be paid to the tenant :—" *per* Maclean, C. J., in *Shama Prosunno Bose Mozumdar v. Brakoda Sundari Dasi* (28 Cal. at p. 148).

In some earlier cases the method adopted by the Courts was "after providing compensation for the amount payable to the landlord as rent, and granting abatement to the ryot, to divide the balance between the two parties in equal shares." This has been regarded as only "a rough and ready way of deciding the matter," and not applicable to every case : *Rajah Khelster Kristo Mitter v. Kumar Dinendra Narain Roy* (3 C. W. N. 202). See also *Dunne v. Nobo Krishna Mookerjee* (17 Cal. 144).

This method of an equal division appears to have originated in a dictum of Garth, C. J., in the case of *Godadhar Das (supra)*, that a zemindar should receive at least as much as the putneedar. It was rejected as improper in *Dinendra Narain Roy's* case (*supra*), by Maclean, C. J., after he had himself followed it in *Khelster Kristo Mitter's* case.

Where the land had been settled with a *jotedar* by the Government, as landlord, for a term of fifteen years, and sub-leased by him to an under-raiyat, it was held that the landlord was entitled to the capitalised value of the rent at 30 years' purchase, and that the balance of the compensation-money should be awarded to the

tenants in the proportion of 3 and 7 : *Manmohan Dutt v. Collector of Chittagong* (40 Cal. 64).

"The parties who usually suffer most from lands being taken for Government purposes are either the ryots with right of occupancy, or the holders, whoever they may be, of the first permanent interest above the occupying ryots. The actual occupier is, of course, turned out by the Government, and if he is a ryot with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere ; and the holder of the tenure immediately superior to the occupying ryots, whatever the nature of his holding may be, loses the rent of the land taken, during the period of his holding. These two classes, therefore, would, generally speaking, be entitled to the larger portion : " *Godadhar Dass v. Dhunput Sing* (7 Cal. p. 589).

Where tenants had been in occupation of land for many years, at the time of acquisition, and had erected masonry buildings thereon with their landlord's consent, which had been sublet to other tenants, it was held that they were entitled to a share of the compensation : *Dunia Lal Seal v. Gopi Nath Khetry* (22 Cal. 820).

A yearly tenant of agricultural land is entitled to a share of the compensation-money awarded for the land which he occupies : *Narain Chandra Boral v. Secretary of State* (28 Cal. p. 152). And even a tenant at will would be entitled to the price of huts which he had erected, although his tenancy might be worth nothing : *Secretary of State v. Belchambers* (33 Cal. p. 408).

An under-raiyat or bhagidar is not entitled to share in the compensation : *Saikh Hasrat v. Jagat Narain Roy* (11 C. W. N. 312n).

No general rule can be laid down for the apportionment of compensation among mirasidars and telkudi tenants, as their rights vary in each estate : *Appaswami Mudali v. Rangappa Nattan* (4 Mad. 367). See also *Sivanatha Naiken v. Nattu Ranga Chari* (26 Mad. 371) : and *Raja Bammadevara, &c. v. Subbarayadu* (36 Mad. 395).

The difference in principle in the distribution of compensation between occupancy and non-occupancy raiyats is not great. The liability to enhancement of rent is larger in the case of the latter, and he is also liable to ejectment. These matters should be taken into consideration in apportioning compensation : *Mitter v. Anukul Chunder Mukerji* (9 C. W. N. 232n).

PART V.

PAYMENT.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

Payment of compensation or deposit of same in Court.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make an application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government, instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same

title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

COMMENTARY.

Cf. Act X of 1870, secs. 40, 41; Ben. Act V of 1911, sch. *Cf.* also 8 & 9 Vic., c. 18, sec. 69.

Section 31 may be regarded as supplemental to secs. 11 and 12, for it prescribes what must be done by the Collector after he has made and filed his 'award,' even before he proceeds to take possession of the land under sec. 10. • He must pay, or at least tender the compensation-money to the parties entitled thereto according to his award. If he takes possession without doing so, say under sec. 17, he becomes liable to pay interest on the whole amount under sec. 34, *post*.

Sub-sec. (1).—This provision is imperative, but no means are provided in the Act for enforcing payment. The Act "imposes a statutory liability upon the Collector to pay the compensation according to the award to the person named therein, and, when the amount is not paid on taking possession, of paying the amount awarded and the added percentage with interest on such amount and percentage, at the rate of six per cent. per annum. There is no general law which enables a Civil Court to enforce such a statutory liability, when imposed upon a Collector or other public officer, by means of execution-proceedings, without a suit. The ordinary mode of enforcing such an obligation is by suit:" *per* Farran, C. J., in *Nilkanth v. Collector of Thana* (22 Bom. p. 805).

Though this was a ruling under the Act of 1870 it is doubtful whether sec. 53, which applies only to "proceedings before the Court," has made any difference. But see also Rule 10, which has the force of law: *Appx. E, post*.

Sub-sec. (2).—This provision enables the Collector to deposit the compensation-money in Court in any of the following contingencies—

(a) If the parties decline to receive it, even under protest (*see proviso*);

- (b) If there be no person competent to alienate the land ;
- (c) If there be any dispute as to the right to receive it ;
- (d) If there be any dispute as to apportionment.

The power given to a Collector to deposit the money in Court when he cannot make payment for any of these reasons, meets a difficulty which was felt under the former Act, and frees him at once from the burden of paying interest on the amount (see Preliminary and Second Reports, cls. 10 & 8, *Appx. D*).

"Money paid into the treasury is to be considered as money or moveable property impressed with the trusts and obligations of the immoveable property which it represents. The rights of parties to the land, and to any mortgage on, or interest in it are transferred to the compensation-money : " *Viraragava v. Krishnasami* (6 Mad. p. 347).

"*Competent to alienate the land.*"—See sec. 3 (g), (iv), *ante*, and sec. 32, *post*. A Shebait has no power of alienation : *Ramprasanna Nandi v. Secretary of State* (40 Cal. 895).

"*Collector.*"—See sec. 3 (c).

"*Court.*"—See sec. 3 (d).

"*Person admitted to be interested.*"—See sec. 3 (b). The words 'admitted to be' were added to make sure that the money was not paid to the wrong person. Taking the money under protest is no bar to asking for a Reference under sec. 18, but taking it without protest would amount to an acceptance of the award.

"*To pay the same to the person lawfully entitled.*"—This has been explained by the Privy Council as follows :—"It sometimes happens that the real owners possibly being infants or persons under disability, do not appear and are not dealt with in the first instance, and therefore a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation-money." "This proviso applies only to persons whose rights have not been adjudicated upon, and it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act, to have that claim re-opened and again heard in another suit : " *Raja Nilmoni Singh v. Ram Bundhoo Roy* (L. R. 8 I. A. 90).

From these remarks it is clear that this proviso, in the opinion of the Privy Council, was introduced for the benefit of persons who, by reason of some disability were prevented from

appearing in the first instance, and so have not had any adjudication of their rights. For "in that case plaintiff was admittedly a party to the apportionment proceedings, and it was held that he was bound by those proceedings and could not re-open the matter by bringing a suit under the proviso."

The Calcutta High Court have, however, extended the scope of the provision to cover the case of a party who had appeared in the first instance before the Collector and obtained an adjudication of his rights and yet neglected, without any ostensible reason, to appear at the Reference before the Judge: *Srimati Punjabi Dai v. Pudmanund Singh* (7 C. W. N. 538).

The effect of this decision is to make it optional with a party either to apply for a Reference under sec. 18, or to institute a suit in the Civil Courts. The special remedy is thereby, in a manner superseded by the general remedy, a somewhat unusual position in law. The same view was expressed in a later case, by one of the Judges of the same Court, who expressed the opinion that the effect of this proviso was to give "the Land Acquisition Judge and the ordinary Civil Court practically concurrent jurisdiction:" *Bhandi Singh v. Ramadhin Roy* (10 C. W. N. p. 999).

It may be doubted whether the Privy Council contemplated so wide an extension of the doctrine. It is to be observed, moreover, that ss. 11 and 12 provide for the adjudication of rights in the absence of parties, "whether they have respectively appeared before the Collector or not," and an 'award' so made is to be regarded as conclusive against them. But this, it is presumed, would only be when the notices had been duly served. It cannot be said that when the amount of compensation has without notice been apportioned and paid away to third parties, persons interested are barred from recovering their share of the money because they omitted to appear before the Court: *Hurmutjan Bibi v. Padma Lochan Das* (12 Cal. p. 35).

There is no limitation prescribed in the Act or elsewhere for the institution of such suits. They would, therefore, presumably come under art. 120 of the Limitation Act, which imposes a period of six years: *Rajah Khetter Kristo Mitter v. Dinendra Narain Roy* (3 C. W. N. 202).

A Judge has power to order a refund of compensation-money paid away to a party under a misapprehension of facts, and to enforce such order in the manner provided in sec. 254 (O. XXI,

R. 30), C. P. C., for the execution of a decree for money: *Nobin Kala Debi v. Banalata Debi* (32 Cal. 921). See also under sec. 53, *post*.

In a later case, the same High Court while admitting the principle that a Judge has power to order a refund of money paid away by himself, held that he had no power on a Reference under sec. 18 to order a refund of money paid away by a Collector under sec. 31(1), and that the rights of the real owner are sufficiently safeguarded by the third proviso to sec. 31 (2): *Gobinda Rani Dassi v. Brinda Rani Dassi* (35 Cal. 1104).

If this be so, it is submitted, a Reference to a Judge under sec. 18, on a question of apportionment, would be infructuous, for he would be unable to enforce his own 'award.' If the Collector had apportioned the compensation in one way, and the Judge in another, the result would be that the parties could not obtain the benefits of the Reference, without having recourse to fresh litigation in the Civil Court. This could hardly have been the intention of the Legislature. On the other hand it is difficult to see why, if a Judge has power in the one case, he should not have it in the other. The Privy Council, moreover, have made it clear that the third proviso to sec. 31(2) is only intended to furnish an alternative course for persons whose rights have not for some reason been adjudicated on. It is clearly not the only course open to the rightful owner.

In referring to this conflict of opinion, in a later case, the same High Court, while declining to express any opinion as to which view of the law was correct, said—"One position appears to be beyond controversy, *viz.*, that when a Civil Court gives a declaration that a defendant has a qualified interest in property, but, under the pretence of absolute ownership, has taken possession of funds which he would not otherwise have been entitled to seize, in view of the provisions of sec. 32 the Court has ample power to give necessary directions to render effective the declaration which it has made:" *Mrinalini Dasi v. Abinash Chandra Dutt* (14 C. W. N. p. 1028). And see also *Jogesh Chandra Ray v. Yakub Ali* (17 C. W. N. 1057): and *Collector of Ahmedabad v. Lavji Mulji* (13 Bom. L. R. 259).

"When, however, a party has once availed himself of a Reference he cannot again ask for an opportunity to litigate the same matter in a Civil Court:" *Bhandi Singh v. Ramadhin Roy* (10 C. W. N. 991).

Sub-sec. (3).—This provision was added as it was “thought desirable to introduce a power, particularly in regard to such cases as temples and other places of worship, to substitute for the land taken other land, instead of handing over a sum of money which was not so fitting a compensation.” The clause specifies two equivalents for a money-compensation, *viz.*, (1) the substitution of other lands, and (2) the remission of land-revenue. But it gives a discretion as to the use of other methods.

“*In such other way as may be equitable.*”—This would seem to be comprehensive enough to admit of the application of the Reinstatement principle. See under sec. 23(1), cl. 1, and Introduction.

“*Land.*”—See sec. 3(a), *ante*.

“*Local Government.*”—See under sec. 3(c).

“*Person having a limited interest.*” See sec. 3(b). The powers of the Collector to enter into special arrangements with such persons is entirely optional. If he preferred to do so he could deposit the compensation-money in the Court, and let the Court deal with it under sec. 32.

Sub-sec. (4).—It will be observed that whereas the previous clause applies to persons having only a limited interest in the land, this provision deals with cases in which the parties are fully qualified to enter into binding arrangements for its disposal. There is a distinction drawn between the two classes of cases.

“*Competent to contract in respect thereof.*”—“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject :” Indian Contract Act (IX of 1872), sec. 11.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

(a) order the money to be invested in the purchase of other lands to be held under the like title

and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid ; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

(a) the costs of such investments as aforesaid ;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

COMMENTARY.

Cf. 8 & 9 Vic., c. 18, ss. 69, 70.

This section, which is new, provides for the proper investment by the Court of moneys deposited by the Collector under the previous section, in cases where the persons interested are not competent to receive it, by reason of some disability. In such cases it was thought "only fair to the owner that the compensation-money

deposited by the Collector should be immediately invested so as to yield him interest till the title to it is settled" (see Second Report, cl. 8, *Appx. D*).

Sub-sec. (1).—Two modes of investment are specified—(a) by the purchase of other lands of a similar character, and (b) by the purchase of Government securities or similar stock. The latter course is to be adopted if the former "cannot be effected forthwith," and it certainly seems the simpler method. The investment is for the benefit of the persons interested and is to continue until the disability is removed.

"*Court*."—See sec. 3(*d*), *ante*.

"*Land*."—See sec. 3(*a*).

Where a Judge made an order under this section for the investment of compensation-money which had been deposited by the Collector under sec. 31(2) the High Court, on appeal, holding that the applicant was competent to alienate the land, set aside the order and directed payment to be made to the person entitled: *Mahammad Ali Raja Avergal v. Ahammad Ali Raja Avergal* (26 Mad. 287). See also *Shiva Rao v. Nagappa* (29 Mad. 117).

On the other hand where a Judge improperly paid the compensation-money to a person who had no power to alienate the land, the High Court directed him to recover the money and invest it in strict compliance with sec. 32: *Sheo Rattan Rai v. Mohri* (21 All. 354). See also *Sheo Prasad Singh v. Jaleha Kunwar* (24 All. 189).

And so where a Hindu widow sold her estate without legal necessity, and the property after the sale came to be acquired under the Act, in a suit by the reversioners for a declaration that they were not bound by the sale, it was held that the purchaser could be compelled to refund the compensation-money improperly paid to him, and deposit the same in Court for proper investment under this section. "There can be no doubt that this section was intended to be applied to the case of the acquisition of lands held by a qualified owner in the position of a Hindu widow:" *Mrinalini Dasi v. Abinash Chandra Dutt* (14 C. W. N. 1024).

"Sec. 32 makes it reasonably plain that although an owner may be deprived of his land for the sake of public purposes, the Legislature intended that the protection enjoyed by reversionary heirs when land is in the hands of limited owners should not be reason

of the acquisition alone, be completely withdrawn. The object would be defeated if, upon the conversion of the land into money, the limited owner was allowed to seize the fund and deal with it as an absolute owner. If such a state of things was tolerated the possibility would not by any means be too remote, that the ultimate owner may be deprived of the use of the fund upon the termination of the limited estate :'' *Id.* (p. 1029). And see also under sec. 54, *post*.

Land dedicated to religious or charitable purposes is land which may properly be described as belonging to 'a person who has no power to alienate' the same, in the sense that the possession and management of dedicated property belong to the 'Shebait' or trustee. When such property is acquired under the Act this section will apply, and the compensation-money must be deposited in Court and invested in the manner prescribed.

It has also been held that, although the application of the moneys so invested is limited to the two purposes stated in clauses (i) and (ii) of the section, which has been modelled on sec. 69 of the Lands Clauses Act, these provisions must be interpreted liberally in the light of the principles deducible from English decisions, and that the Court has power under cl. (i) to direct that a portion of the fund be paid out for legitimate repairs and other contingencies which are for the benefit of the property, when the income is insufficient for the purpose, the cardinal principle being that the endowment should not be prejudiced by reason of the transformation of the land into money: *Kamini Debi v. Pramatha Nath Mookerjee* (39 Cal. 33).

Under the Lands Clauses Act of 1845, sec. 69, payment has been ordered, out of moneys deposited in Court, for repairs to buildings which had been condemned as dangerous structures: *In re Davies's Estate* (27 L. J., Ch. 712).

Purchase-money of Glebe lands paid into Court by a railway company has also been applied towards the repair of the rectory buildings, the restoration of the chancel, and the discharge of a loan: *In re Louth and East Coast Railway Co.* (L. R. 2 Ch. D. 225). And see *Ex parte Rector of Gamston* (L. R. 1 Ch. D. 477).

Such moneys have also been applied for the redemption of a mortgage existing upon another part of the property: *Ex parte Corporation of Cambridge* (6 Hare, 30). See also *In re Derby Municipal Estates* (L. R. 3 Ch. D. 289).

"Where money has been paid into Court by reason of real estate having been taken under compulsory powers, and remains in Court, it is to be held as money or personal estate in the hands of the Court impressed with the trusts of real estate :—" *per* Stuart, V.-C., *In re Stewarts Trusts* (22 L. J., N. S., at p. 370).

Sub-sec. (2).—This provides for the payment of the expenses incurred in, and incidental to, the investment. They are specified in clauses (a) and (b). Strictly speaking these are not "costs." The term "costs," as is well known to all lawyers, is applicable only to the costs of litigation, and they are expressly excluded by the section.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

Investment of
money deposited in
other cases.

COMMENTARY.

Cf. 8 & 9 Vic., c. 18, sec. 70.

This section provides for the investment of compensation-money deposited by the Collector in Court, in cases where he is prevented from paying it away for any other reason mentioned in sec. 31(2) which is not provided for by sec. 32. The moneys are to be invested in Government securities or similar stock. But the direction is not compulsory, and the Court can only act on the application of an interested party. The proceeds of the investment may either be paid away or accumulated.

"Court."—See sec. 3(a), *ante*.

"Any party interested."—See sec. 3(b).

Under the Lands Clauses Act of 1845 it has been held that a tenant for life is a proper person to make an application under sec. 70 of that Act : *Ex parte Staples* (21 L. J., Ch. 251).

"*Land*."—See sec. 3(a).

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

COMMENTARY.

Cf. Act X of 1870, sec. 42, ch. 2.

This section provides for the payment of interest on the amount awarded by the Collector if he omits to pay or deposit the money in Court before he takes possession of the land. But there is no reason why he should do so if he observes the provisions of sec. 31. It is only in cases of urgency, where he is obliged to take possession before he has completed his award (see s. 17), that this contingency need arise. Even then the obligation is only temporary.

"*The amount awarded with interest*."—This means the amount of compensation awarded for the land including the statutory allowance, as provided in sec. 23(2), together with interest on the whole : *Nilkanth v. Collector of Thana* (22 Bom. p. 805). See under sec. 31, *ante*.

"*Taking possession*."—See ss. 16, 17, *ante*.

"*Land*."—See sec. 3(a).

"*Collector*."—See sec. 3(c).

"*Amount awarded*."—See sec. 11.

"*Paid or deposited*."—See sec. 31.

PART VI.

TEMPORARY OCCUPATION OF LAND.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

COMMENTARY.

Cf. Act X of 1870, sec. 43 ; Act II of 1861, sec. 3 ; Act VI of 1857, sec. 37. *Cf.* also 8 & 9 Vic., c. 20, ss. 30-44.

The temporary acquisition of land, for the construction of 'roads, canals, or railways,' was provided for by legislation as far back as 1857, and in 1861 a special Act was introduced for the purpose (see Introduction). The scheme is borrowed from the Railway Clauses Act, 1845 (ss. 30-44).

The essential elements of temporary occupation under Part VI of this Act are (1) the subject of acquisition can only be 'waste or arable land,' (2) the terms of occupation must be settled by agreement, and (3) only in the event of a dispute by a reference to the Court.

Sub-sec. (1).—This provision must be compared with sec 6(1) *ante*, which relates to permanent acquisition. Here no declaration is necessary of the proposed occupation, and the Collector may be directed at once to proceed to take action, as in sec. 7.

"*Local Government.*"—See under sec. 3(c), *ante*.

"*Public purpose.*"—See sec. 3(f), and sec. 6(3), *ante*. There is no definition of this term in the Act, but under sec 6 the declaration by the Local Government is itself conclusive evidence of the fact. Under sec. 35 no declaration is necessary, so that, it is difficult to say, if the question were raised, how it should be decided.

"*Company.*"—See sec. 3(c).

"*Collector.*"—See sec. 3(c).

"*Not exceeding three years.*"—The most convenient arrangement for temporary occupation would be by lease. After expiry of the term fresh proceedings would be necessary.

Sub-sec. (2).—It will be observed that here the 'notice in writing' is intended to declare the purpose of the proposed occupation, and virtually takes the place of a declaration under sec. 6. It is more like the 'notice to treat', in the English Act.

"*Persons interested.*"—See sec. 3(b), *ante*.

"*Materials to be taken therefrom.*"—The materials specified in Act II of 1861 are "clay, stone, gravel, and sand," *i.e.*, for the construction or repair of 'roads, canals, or railways.' It is the same in the Railway Clauses Act, 1845, sec. 43.

"*Agreed upon in writing.*"—Such an agreement would be free of stamp-duty: see sec. 51, *post*.

Sub-sec. (3).—This provides for a reference to the Court in the event of a difference as to the sufficiency of the compensation offered or the manner of its apportionment. There is no provision for referring any other question, nor are the parties entitled to claim it, as they can under sec. 18. It is to be observed also that no procedure is laid down for hearing the reference, as in Part III, nor are its provisions made applicable, as in sec. 48(3), *post*.

It is presumed, therefore, that the questions submitted are intended to be considered *ex parte*, and that the decision of the Court when received will be incorporated with the Collector's 'award,' which is probably intended to be final, though the section does not expressly say so. See also under sec. 30, *ante*.

"*The decision of the Court.*"—The expression is to be noted. The word 'award' is nowhere employed in Part VI, from which it may be inferred that the judgment of the Court on the questions referred is not an 'award.' If this be so it would not be appealable as a decree under sec. 54, *post*.

Power to enter and take possession and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon, and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

COMMENTARY.

Cf. Act X of 1870, sec. 44. *Cf.* also 8 & 9 Vic., c. 20, ss. 42, 43.

Sub-sec. (1).—It will be observed that it is not necessary for the Collector to make an award in the first instance, as he would have to do under sec. 11. If the terms are settled and the agreement executed the Collector may at once enter into occupation of the land, that is if the compensation is to be given in "periodical payments" or by way of lease. But if it is payable "in a gross sum of money," payment should be made of the whole amount before occupation of the land.

If no agreement is arrived at, and a reference becomes necessary, the Collector may take possession as soon as the reference is made, but the land can only be used for the purpose specified in the notice.

Sub-sec. (2).—On the expiration of the tenancy the land must be restored to the owner. Any special damage "not provided for by the agreement" must be paid for, or compensation tendered by the Collector. If the compensation tendered be not accepted, it is presumed he would refer the matter to the Court under sec. 37: Provided that if the condition of the land be such that it is no longer fit to be used for its original purpose the owner may claim that the land be purchased outright. The Local Government must then proceed to acquire it permanently under the Act. If they decline to do so, and a suit is brought, it must, it is presumed, be instituted within one year from the date of refusal to complete (Act IX of 1908, sch.i, art.18).

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

Difference as to condition of land.

COMMENTARY.

Cf. Act X of 1870, sec. 45. *Cf.* also 8 & 9 Vic., c. 20, sec. 44.

This section provides for a further reference to the Court in the event of a dispute as to the condition of the land at the expiration of the tenancy, or as to any question arising out of the agreement. Here also there is no procedure prescribed for the hearing of a reference, nor are the provisions of Part III made applicable, as they are in a proceeding under sec. 48. It is presumed, therefore, that the questions are intended to be considered *ex parte*, or at least not in open Court, and that on the return of the 'reference' the Collector is to act in conformity with the Court's decision, and that there will then be an end of the matter. See under sec. 35(3), *ante*, and sec. 48(3), *post*.

"*Decision of the Court.*"—In deciding a question as to the condition of the land, it is presumed the Court would consider not only matters of special damage, but also questions of radical alteration and permanent unfitness. It would not be an 'award' in any sense of the term, nor appealable under sec. 54.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

38. (1) Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

Company may be authorized to enter and survey.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

COMMENTARY.

Cf. Act X of 1870, sec. 46: Act XXII of 1863, secs. 26-33.
Cf. also Bom. Act IV of 1898, sch.

The acquisition of land for Companies for the construction of works of public utility was first introduced by special legislation in 1863. The provisions then formulated were subsequently incorporated in Act X of 1870, Pt. VII, as circumstances no longer justified their separate existence (see Introduction). Part VII of that Act has been transferred bodily into Part VII of this Act, and two new sections (43, 44) have been added.

Sub-sec. (1).—It is provided by sec. 4(1) that a notification must first of all be published in the official gazette, and also locally, signifying "that land is likely to be needed," before any officer can be authorised to take action. After this has been done, any or all of the acts prescribed in sec. 4(2) may be performed.

"*Local Government.*"—See under sec. 3(c), *ante*.

"*Land.*"—See sec. 3(a).

"*Company.*"—See sec. 3(e).

"The powers conferred by section 4."—This, it is presumed, means sec. 4(2), for the first part of the section relates to the action to be taken by the Government themselves.

Sub-sec. (2).—This clause is intended to adapt the general provisions of ss. 4 and 5 of the Act to the particular requirements of this Part (see ss. 4, 5).

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

Previous consent of Local Government and execution of agreement necessary.

COMMENTARY.

Cf. Act X of 1870, sec. 47.

This section, the meaning of which is somewhat involved by its being cast in a negative form, is intended to adapt the foregoing provisions of the Act (Pts. II—VI, ss. 6-37) to the requirements of Companies seeking to obtain land for works of public utility, provided they have satisfied the conditions prescribed, to the satisfaction of the Local Government.

"Land."—See sec. 3(a), *ante*.

"Company."—See sec. 3(e).

"Local Government."—See under sec. 3(c). The consent of the Government and the agreement by the Company must precede the declaration under sec. 6.

40. (1) Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—

Previous enquiry.

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

COMMENTARY.

Cf. Act X of 1870, sec. 48.

This section provides that the consent of the Local Government is not to be given to the proposed acquisition unless upon due enquiry it is satisfied that the land is wanted for the construction of some work of public utility.

"It is not intended," said the mover of the Bill, "that the Act shall be used for the acquisition of land for any company in which the public has merely an indirect interest, and of the works carried out by which the public can make no direct use. The Act cannot, therefore, be put in motion for the benefit of such a company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly 'likely to prove useful to the public,' it is not possible to predicate of them 'the terms on which the public shall be entitled to use them' (see sec. 41(5), *post*), a condition precedent to the acquisition of land. It is important both that the public should understand that the Act will not be used in furtherance of private speculations, and that the Local Governments should not be subjected to pressure, which might sometimes be difficult to resist, on behalf of enterprises in which the public have no direct interest."

Sub-sec. (1).—"Section 40 constitutes the Government, as the custodian of the public interests, the sole judge of the two facts mentioned therein, namely, whether the land is required for the construction of some work, and secondly, whether that work is likely to prove useful to the public." *Ezra v. Secretary of State* (30 Cal. p. 77).

Sub-sec. (2).—This clause has been judicially explained as follows—"The enquiry which is required under sub-section 2 is for the purpose of satisfying the Local Government. The application which is made to the Local Government is made by the Company on the allegation that the acquisition is needed for the construction of some work. The Company therefore has to satisfy the Local Government as to the reality and *bonâ fides* of the said

allegation. It has also to satisfy the Government, and the Government is to satisfy itself, that the work which is proposed to be constructed is likely to prove useful to the public. The only parties concerned in this enquiry are the Government on one side, which has to be satisfied, and the Company, which has to furnish materials for the purpose of satisfying the Local Government. There is no provision in this section that any other person should be summoned or required to attend at the enquiry contemplated :'' *Ezra v. Secretary of State* (30 Cal. p. 75).

The Privy Council have also observed, in the same case on appeal,—“ There is no provision requiring or implying the presence or the knowledge of the owner of the land. The theory of the section would seem to be that the Government through its officer is to direct its attention to public interests, and it is significant that neither promoter on the one hand, nor possible objector on the other, is mentioned in the section. This does not imply that the officer is to disregard the existence of adverse rights, and the word ‘ needed ’ implies this. But the standpoint is that of public interest, and the Government is given control of the enquiry, for this is all that is meant by its being empowered to appoint time and place ; and all this derives the more significance from the fact that the Act, both in this stage and in the subsequent enquiry into value, takes the initiative out of the hands of the Company and puts it in the hands of the Government. That the nature of the first enquiry is in no sense litigious, and that the owners of the land are purposely ignored as parties, is strongly shown by the anxious provisions made as regards the second enquiry for which (section 9) ‘ public notice ’ is to be given, calling for claims for compensation and requiring all persons interested in the land to appear at a time and place specified :’’ *Ezra v. Secretary of State* (32 Cal. 605).

In view of these potent observations there can be no doubt whatever as to the object of this provision, or the character of the enquiry intended.

“ *Local Government.*”—See under sec. 3 (c), *ante*.

“ *Such officer.*”—“ The Act requires that the enquiry should be held by such officer as the Local Government shall appoint. It is clear therefore that the enquiry must be by some officer of the Government itself. It is not open to us, as we apprehend the law, to discuss either his qualifications or the sufficiency of the enquiry held by him. In our opinion the Local Government is

the sole judge of those matters. So long as it is satisfied upon the two matters which are made conditions precedent to its according its consent to the acquisition of the land, this Court in our judgment is not competent to question the validity of the proceeding under sec. 40 :'' *Ezra v. Secretary of State* (30 Cal. at p. 78).

Sub-sec. (3).—This clause confers on the officer appointed to hold the enquiry the same powers of securing the production of evidence as are conferred on the Collector by sec. 14, *ante*. It will be observed, however, that the "parties interested" are not included, which is an additional argument in support of the views expressed above as to their exclusion from this enquiry.

"The officer deputed to make the enquiry is to give the Company notice, and, if necessary, to take evidence from the Company regarding the questions on which he is to report. Sub-section 3, in empowering the said officer to summon witnesses, etc., contemplates only the possibility of his having to take evidence on behalf of the party who is principally concerned in that particular enquiry, namely, the Company. The time and place which are appointed are for the purpose of enabling the Company to produce its evidence or to place materials for the satisfaction of the officer. Nowhere in the Act is there any provision that the owner of the land should appear before the officer deputed under sec. 40, or at all, until the service upon him of the notice under section 9 :'' *Ezra v. Secretary of State* (30 Cal. p. 77).

"*Provided by the Code of Civil Procedure.*"—See Act V of 1908, Orders XI, XIII, XVI.

41. Such officer shall report to the Local Government the result of the enquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

Agreement with
Secretary of State in
Council.

(1) the payment to Government of the cost of the acquisition ;

(2) the transfer, on such payment, of the land to the Company ;

(3) the terms on which the land shall be held by the Company ;

(4) the time within which, and the conditions on which, the work shall be executed and maintained ; and

(5) the terms on which the public shall be entitled to use the work.

COMMENTARY.

Cf. Act X of 1870, sec. 49.

When the enquiry is concluded the officer must report the result of his conclusions to the Local Government, and it is on this report that their decision will be based. If they consent to the acquisition the Company must enter into an agreement with the Secretary of State in the terms provided by the section, and to the satisfaction of the Government.

" *Such officer.*"—See under sec. 40(2).

" *Local Government.*"—See under sec. 3(c), *ante*.

" *For the following matters.*"—Where it was alleged that an agreement under sec. 41 was defective by reason of its having no 'substantial provision' regarding the uses by the public under cl. (5), and also in other respects, it was held that "sec. 41 makes the Government the sole judge of the manner in which the public are to have the use of the land taken up," and that the High Court has no power to entertain the question: *Ezra v. Secretary of State* (30 Cal. p. 79).

" *Company.*"—See sec. 3(e).

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette of India, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Publication of agreement.

COMMENTARY.

Cf. Act X of 1870, sec. 50.

The final stage of the proceeding is the publication of the agreement in the official Gazettes. This is necessary to apprise the public of the terms on which they may utilise the work.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

COMMENTARY.

This section is new, and only means that these proceedings will not be necessary in cases where a Railway or other Company has been formed on the express understanding that the land will be acquired for them and the Government is liable to do so under some other agreement. Sections 39 to 42 correspond with ss. 47 to 50 of Act X of 1870.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

How agreement between Railway Company and Secretary of State may be proved.

COMMENTARY.

The Indian Evidence Act (I of 1872) sec. 37 provides that "When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it in a notification of the Government appearing in the Gazette of India or in the Gazette of any Local Government, is a relevant fact." And sec. 81 provides that "The Court shall presume the genuineness of every document purporting to be the Gazette of India, or the Government Gazette of any Local Government."

PART VIII.

MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him ; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

COMMENTARY.

C/. Act X of 1870, sec. 51 ; and Act V of 1908, Order v.

This section prescribes the various methods of service of the notices mentioned throughout the Act. They are adopted from the Code of Civil Procedure.

Sub-sec. (1).—It is the Collector who is directed to publish the notice required by sec. 4(1) and it is difficult, therefore, to see

why it should not be signed by him, instead of by some other officer who is not empowered to issue it. It will be observed that the 'officer' mentioned in sec. 4 (2) is only authorised to do certain acts prescribed therein, and has nothing to do with the notice referred to in the previous clause. As regards all other notices, those that are issued by the Collector are to be signed by him, and those issued by the Judge or Court must be signed by the judge. The words 'Judge' and 'Court' appear to be interchangeable terms. See also under sec. 38(1).

"Collector."—See sec. 3(c), *ante*.

"Judge."—See sec. 3(d).

Sub-sec. (2).—The same method is prescribed for service of summonses (O. v, R. 12).

Sub-sec. (3).—This is similar to the method adopted under the Code (O. v, R. 17).

The circumstances under which a notice issued under sec. 9(3) may be posted are where the person "resides elsewhere and has no agent." The Indian Post Office Act (VI of 1898), ss. 28, 29, now contains the provisions mentioned.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Penalty for obstructing acquisition of land.

COMMENTARY.

Cf. Act X of 1870, sec. 52.

This section imposes penalties for obstructing the acquisition of land in any of the ways specified. The 'acts authorised' in sec. 4 are those specified in sec. 4(2), and those in sec. 8 relate to the measurement of the land.

"*Wilfully obstructs.*"—It is necessary to establish the *mens rea* to obtain a conviction.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Magistrate to enforce
surrender.

COMMENTARY.

Cf. Act X of 1870, sec. 53 ; and Act II of 1861, sec. 2.

The provision for enforcing the surrender of land in presidency towns through the Commissioner of Police in case of resistance was first introduced in 1861 (see Introduction).

"Collector."—See sec. 3(c).

"Taking possession of any land."—See secs. 16, 17, *ante*.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

COMMENTARY.

Cf. Act X of 1870, sec. 54. *Cf.* also Ben. Act V of 1911, sch.

An important change has been made in the law by this section. Under the previous Act the Government could not withdraw from

the acquisition after 'an award had been made or a reference directed.' This was an obvious hardship in cases when the land turned out to be more valuable than the acquisition was worth. The difficulty has been removed by fixing the bar at the taking of possession, an act which can be indefinitely postponed to meet the occasion. This was explained by the Select Committee when the Bill was under consideration (see Second Report, cl. 11, *Appx. D*, and Introduction).

In such a case the payment of compensation under sec. 31(1), which is intended to be prompt, would, it is presumed, be also postponed.

Sub-sec. (1).—This provision has no application to the temporary occupation of land under Pt. VI. Possession taken under sec. 36 could only be for three years at the most, and the circumstances would be entirely different. Permanent possession may be taken under s. 16 or 17, *ante*.

"*The Government*."—This means the Local Government, see under sec. 3(c), *ante*.

Sub-sec. (2).—It is difficult to predicate the kind of damage for which compensation might be claimed under this clause, but it is presumed that any loss which is directly traceable to the proceeding, from the time of its initiation to the time of withdrawal, would be covered by the provision. The costs would vary according to the nature and duration of the enquiry.

"*Collector*."—See sec. 3(c), *ante*.

"*The owner*."—The expressions 'owner' and 'person interested' may be regarded as interchangeable terms: see sec. 3(b).

"*The notice or any proceedings thereunder*."—The notice under sec. 9 is probably intended, but the one under sec. 4 would equally answer the description.

"*Costs reasonably incurred*."—This means up to the time of withdrawal. If an award had been made by the Judge, the provisions of sec. 27, it is presumed, would also apply.

"*The land*."—See sec. 3(a).

Sub-sec. (3).—This, it is presumed, means that the provisions relating to a general reference under Part III (ss. 18-28) are applicable to the determination of a claim under this section, as far as possible. In other words, any person interested, who has not accepted the Collector's award as to compensation for damage due

to withdrawal, "may require that the matter be referred by the Collector for the determination of the Court." The same procedure will be adopted as obtains in the hearing of a general reference, and an award will be framed by the Judge in terms of sec. 26, so far as it is applicable to the question under consideration. Such an award would, it is presumed, be also appealable under sec. 54, *post*.

It will be observed that this important provision occurs in no other part of the Act. It has not been made applicable to other references which a Collector is authorised or directed to make, *e.g.*, under sec. 30 (on a question of apportionment), or under sec. 35(3) or sec. 37 (in cases of temporary occupation). There is no reason to think that this omission was accidental, and its absence from the sections mentioned, where it might have been expected to occur, lends support to the view, already expressed, that the references in those cases were not intended to be in the nature of public proceedings. See under ss. 30 and 35(3), *ante*.

Two new sections, 48A and 48B, have been added by the Calcutta Improvement Act, 1911 (see *Appx. A & B, post*).

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Acquisition of part
of house or building.

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

COMMENTARY.

Cf. Act X of 1870, sec. 55; 8 & 9 Vic., c. 18, sec. 92.

Cf. also Ben. Act V of 1911, sch.

Section 49 comprises two provisions so entirely distinct that it is to be regretted they were not kept separate. The first part of the section embodies a well-known English principle of Compensation relating to the acquisition of a part of any 'house, manufactory, or other building,' and provides that if the owner desires to sell the whole of it he shall not be compelled to give up only a part. The second portion provides that when a claim for damages on account of 'severance,' made under sec. 23, is unreasonable or excessive, the Local Government may direct the acquisition of the whole of the 'land.'

The former provision, moreover, is limited to property of a specified kind, while the latter relates to 'land' generally.

Sub-sec. (1).—The first clause is borrowed from the English statute above mentioned, and appeared in the previous Act, but the rest of the section is new. The last clause was added by the Select Committee (see Third Report, cl. 12, *Appx. D*).

The second proviso, which provides for a reference by the Collector to the Court, was introduced to remedy the defect which existed in the previous Act, as pointed out in *Taylor v. Collector of Purneah* (14 Cal. 423), and again in *Ramalakshmi v. Collector of Kistna* (16 Mad. 321).

"House."—This term would include the building and whatever is "necessary for the use and convenient occupation of the house." It does not include what is merely subsidiary to that: *per* Turner, L. J., in *Steele v. Midland Railway Co.* (L. R. 1 Ch. App. 275). In this case it was sought to include a six-acre field which was used by the owner for pasturage, for his horses and cows, and it was held that the horses and cows were not necessary for the 'use and occupation of the house,' though they might be for the personal enjoyment of the occupier, which was quite another thing.

But gardens attached to houses are a part of the premises and would be included with them. A garden is a necessary appurtenance to a dwelling-house: *Colc v. West London and Crystal Palace Railway Co.* (28 L. J., Ch. 767): *Hewson v. London and South-Western Railway Co.* (2 L. T., N. S., 369).

And so where unfinished houses stood upon a piece of land, which, if the buildings had been completed, would have been apportioned between them as gardens, it was held that a railway company could not compulsorily take a part of the land without making themselves liable under the Act to take the whole: *Alexander v. West End of London and Crystal Palace Railway Co.* (31 L. J., Ch. 500).

On the other hand where a large piece of land had been used for many years as a market-garden, and the owner thereafter built on a part of it a small cottage for the convenience and occupation of a tenant of the garden, it was held that the garden was not appurtenant to the cottage, and that a railway company were not obliged under the Act to take the whole of the land in question. "The main question in this case appears to be whether this piece of land is a field or a garden and, as between the two, I am of opinion that it is a field and not a garden:" *per* Lord Selborne, L. C., in *Falkner v. Somerset and Dorset Railway Co.* (L. R. 16 Eq. 458).

Where, however, the owner of the land, though he carried on the business of a fruit-grower and florist, occupied a large and spacious dwelling-house in the midst of ornamental lawns and

picturesque surroundings, it was held that the railway company could not acquire a part of the land without taking the whole. "It is impossible to say that there is any of the part not proposed to be taken that does not belong to the house as a residence:" *per* James, V.-C., in *Salter v. Metropolitan District Railway Co.* (L. R. 9 Eq. 432).

The word 'house' comprises all that would pass by the grant of a messuage, which includes not only the curtilage but also the garden, and all that is necessary to the enjoyment of the house, if within one ambit, whether attached to the main building or not, and though purchased subsequently to the erection of the main building: *Governors of the Hospital of St. Thomas v. Charing Cross Railway Co.* (30 L. J., Ch. 395).

"Land held with a house does not necessarily pass under the word 'house,' even though it was intended to pass; but if it is part of the curtilage, and within the circuit of the house, if it is necessary to the enjoyment of the house, if it forms part of that which is necessarily held and occupied with the house, and without which it cannot be enjoyed, then it does pass under the word house:" *per* Lord Romilly, M. R., in *King v. Wycombe Railway Co.* (29 L. J., Ch. at p. 465).

And so where a public-house had in front of it a vacant piece of land which was traversed by customers and furnished the only means of approach for vehicles to the front-door, it was held that the land came within the definition of a 'curtilage,' and was part of the 'house' within the meaning of the Act: *Marson v. London, Chatham, and Dover Railway Co.* (L. R. 6 Eq. 101).

On the other hand where a strip of land in front of a house had only been used as a pleasure-ground and for grazing purposes, it was held to be no part of the house. "It is impossible, I think, to say that this strip is of necessity, or any thing more than of pleasure, to the house:" *per* Turner, L. J., in *Fergusson v. London, Brighton, and South Coast Railway Co.* (33 L. J., Ch. 29). See also *Kerford v. Seacombe, Hoylake and Deeside Railway Co.* (57 L. J., Ch. 270).

"*Manufactory*."—This may be a house or a building or only land which is used for the purpose of manufacturing. "Each thing described is different from the others, and it is not circumscribed by the description of any of the others:" *per* Brett, L. J., in *Richards v. Swansea Improvement and Tramways Co.* (L. R. 9 Ch. D. 425).

From this it is clear that the use to which it is applied will determine whether any of them constitutes a 'manufactory.' In this case the premises consisted of a house and five small buildings or cottages. The owner occupied the house for his residence and used the other buildings as a candle factory and storehouses. It was held that the whole block of buildings constituted a 'manufactory,' and could not be divided against the owner's will.

And so where a 'manufactory' lay on one side of a road, and the land sought to be acquired by a railway company lay on the other side of it and comprised some cottages and outhouses which were used by the owner as store-houses for his goods, it was held that they were a part of the 'manufactory,' and that the mere circumstance of the road intervening was not sufficient to make them a distinct property: *Spackman v. Great Western Railway Co.* (1 Jur., N. S., 790).

"*Other buildings.*"—In the Lands Clauses Act, 1845, sec. 92, the words are "any house or other building or manufactory," though there seems to be no practical difference between the two provisions. "I think that the word 'building' was put in for the purpose of extending the provision of the section to other erections which might not fall within the description of the word 'house,' and to buildings connected with manufactories:" *per* Turner, L. J., in *Grosvenor v. Hampstead Junction Railway Co.* (26 L. J., Ch. at p. 737).

"'Building' and 'house' I look upon as distinct in this way that there may be a building which could not be said, either in the legal sense or in the ordinary sense, to be a house, and that therefore that word was added as something different from that in order to include something not necessarily included in this word 'house':" *per* Cotton, L. J., in *Richards v. Swansea Improvement, etc., Co.* (L. R. 9 Ch. D. 425).

Semi-detached villas although comprised in one building are nevertheless distinct houses, independent of one another. "They are separately occupied by separate families, they have separate hall doors, and they have no internal communication in the ordinary sense of the term, that is to say, by which the inmates of one villa should pass into the other villa:" *per* Lord Cairns, L. C., in *Harvie v. South Devon Railway Co.* (32 L. T. 1).

On the other hand where the owner lived and carried on business in two houses, with internal communications, which he

used as one, though holding them under separate leases, it was held that the premises constituted together one entire house within the meaning of the Act, and that if the Company took a part they must take the whole : *Siegenberg v. Metropolitan District Railway Co.* (49 L. T., N. S., 554).

The word 'building' is not in the ordinary sense a 'house', but it is something which is "in the nature of a house:" *per Brett, L. J.*, in *Richards v. Swansea Improvement, etc., Co.* (*supra*). It would include a chapel or similar structure : *Genders v. London County Council* (C. A. [1915] 1 Ch. 1).

The words 'other building' could not be meant to include such an undertaking as the Regent's Canal with its appurtenances, which extends from Paddington to Limehouse : *Regent's Canal and Dock Co. v. London County Council* ([1912] 1 Ch. 583).

"The whole of such house."—A dwelling-house includes the land round it which is necessary for its convenient use and occupation : *Sarat Chandra Bose v. Secretary of State* (10 C. W. N. 250).

"The Collector shall refer the determination of such question."—This reference, which is limited to a single question, appears to be of the same character as those provided by ss. 35(3) and 37. Its object presumably is to afford the Collector the benefit of the judgment of the Court on a difficult point. No rules are laid down for the hearing of such a reference, nor are the provisions of Part III made applicable, as they are in sec. 48(3). From this it may be inferred that it is not to be heard in open Court and that the opinion of the Judge when received by the Collector will be used by him in framing his 'award' under sec. 11. In any case he is not to take possession until the question is decided.

The words are imperative. "Sec. 49 of the Act clearly leaves no option to the Collector. It says 'he shall refer the determination of such question to the Civil Court.' We entertain no doubt, therefore, that we have jurisdiction to set right the error committed by the Deputy Collector in not making a reference under sec. 49:" *Krishna Das Roy v. Collector of Pabna* (16 C. W. N. 328).

An application for a reference may be made at any time before the Collector has framed his 'award': *Id.* (p. 329).

"Required for the full and unimpaired use of the house:"—This implies that this question is to be considered in connection with the one referred under the preceding clause, and not generally. The meaning apparently is that if land is not a necessary adjunct

to a house or other building, it cannot be said to "form part" of it, and if it does not form part of it the owner cannot insist on the acquisition of the whole house : *Nita Ram v. Secretary of State* (30 All. 176).

A portion of a block of buildings may be a 'part of a house' in the sense that it is structurally connected with the rest of the block, but at the same time it may not be necessarily 'required for the full and unimpaired use of the house' so as to create an obligation to acquire the whole of it. *Venkataram Naidu v. Collector of Godavari* (27 Mad. p. 354).

If the removal of a part will substantially injure the building, so that it can no longer be used and enjoyed as it was before, the whole must be taken : *Green v. Corporation of Hackney* ([1910] 2 Ch. 105).

Under the previous Act an owner could stand on his rights and insist on the acquisition, there being no option in the matter : *Khairati Lal v. Secretary of State* (11 All. p. 382).

"Owner."—This and the expression "person interested," which occurs in sub-sec. (2), appear to be interchangeable terms. See sec. 3(b), *ante*. See also *Krishna Das Roy v. Collector of Pabna* (16 C. W. N. p. 328).

A new sub-sec. (1a) has been added to this by Ben. Act V of 1911 (see *Appx. A & B, post*).

Sub-sec. (2).—This provision must be read along with sec. 23(1), cl. (3), to which it would make a suitable proviso. It provides that if an owner's claim before the Collector on account of 'severance' is, in the opinion of the Local Government, 'unreasonable or excessive,' he may be compelled to part with the whole of his land. But this, it is presumed, would not prevent a Collector from making his 'award' without regard to the immoderate demand, leaving the owner to his remedy under sec. 18. The matter would then be determined by the Court in the usual way.

"Local Government."—See under sec. 3(c), *ante*.

"Land."—See sec. 3(a).

Sub-sec. (3).—If the local Government decide on acquiring the whole of the 'land,' the owner must be apprised of the order at once, and the Collector can then proceed to make his award without a fresh declaration. But if the case fell under the first clause it would be necessary : *Government v. Dayal Mulji* (9 Bom. L. R. 99) ; *Bhagvandas v. Special L. A. Officer* (17 Bom. L. R. 192).

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

Acquisition of land
at cost of a local authority
or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

COMMENTARY.

Cf. Act X of 1870, sec. 56.

Sub-sec. (1).—This section provides for the payment of the costs of an acquisition by a 'Company' or a 'local authority' when land has been acquired for their benefit. As regards Companies this has been already provided for by sec. 41(1), *ante*.

"Local authority."—See under sec. 6, *ante*.

"Company."—See sec. 3(e).

Sub-sec. (2).—There is no provision in the Act for any notice to be served on a Company or local authority, either under sec. 9 or sec. 20, although the Collector himself is entitled to a notice under sec. 20. This clause, however, permits such bodies to appear without notice in any proceeding, and to adduce evidence on the question of compensation. "The reason of this is obvious, for the Company has to pay the compensation. To give effect to this provision the Board of Revenue has framed a rule : " *Ezra v. Secretary of State* (30 Cal. p. 82).

Rule 21 requires the Collector to give notice to the Company so that they may have "an opportunity of contesting the claims of the claimants to compensation, and of adducing evidence as to the proper amount payable, before he makes his award."

"Such a Company or local authority has not the power to ask for a reference under sec. 18 of the Act ; neither does the Act give

it the right of appeal :” *Municipal Corporation of Pabna v. Jogen-dra Narain Raikut* (13 C. W. N. p. 118). See also *In re Howrah Municipality* (9 C. W. N. 66 n).

“Collector.”—See sec. 3(c), *ante*.

“Court.”—See sec. 3(d).

“Entitled to demand a reference.”—The reason for this provision is explained by the Select Committee (see Second Report, cl. 12, *Appx. D*).

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

COMMENTARY.

Cf. Act X of 1870, sec. 57.

“Award.”—See secs. 11, 26.

“Agreement.”—See sec. 41.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

COMMENTARY.

Cf. Act X of 1870, sec. 58. *Cf.* also Act V of 1908 (C. P. C.), sec. 80.

This section provides for a notice of one month as a condition precedent to the institution of certain suits or proceedings. These, presumably, would be actions for damages for wrongful acts committed in the course of the acquisition proceedings which had not been adequately compensated by the Collector. These are the only suits which can be brought against him. The previous Act contained a further clause expressly providing that ‘no suit could be brought to set aside an ‘award’ under the Act,’ which has been

omitted from the present Act. Its omission was due, no doubt, to the emphatic terms of sec. 12, which provides that an 'award' shall be final "except as hereinafter provided," i.e., in the Act itself. Such a provision was therefore superfluous.

The Privy Council have also observed—"Their Lordships are of opinion that the provisions in this Act for the settling of compensation are intended to be final." This was further expounded as follows:—"The amount and distribution of the compensation having been settled by a competent Court, and the decision not having been appealed against the settlement is final, and the present suit cannot be maintained:" *Raja Nilmoni Singh v. Ram Bundhoo Roy* (7 Cal. 388).

"Any person."—This means here any one authorised to act officially, e.g., the Collector.

"Anything done in pursuance of this Act."—This refers to "a tortious act done under the enactment:" *Ezra v. Secretary of State* (30 Cal. p. 73).

"If a person, or a body of persons, having statutory authority for the construction of works, exceeds or abuses the powers conferred by the Legislature, the remedy of a person injured in consequence is by action or suit, and not by a proceeding for compensation under the statute which has been so transgressed. Powers of this sort are to be exercised with ordinary care and skill and with some regard to the property and rights of others. They are granted on the condition, sometimes expressed and sometimes understood, that the undertakers 'shall do as little damage as possible' in the exercise of their statutory powers:" *per Lord Macnaghten in Gaekwar Sirkar of Baroda v. Gandhi Kachrabhai Kasturchand* (7 C. W. N. p. 399). See also under ss. 12, 18, *ante*, and sec. 53, *post*.

"Tender of sufficient amends."—This would be as effectual a bar to the suit as want of notice or limitation, and would have to be determined by the Court before the action could be entertained.

No period of limitation is prescribed in the section for such suits, but the Limitation Act (IX of 1908), arts. 17, 18, 36, 62 and 120 would probably apply to every possible contingency. See *Rameswar Singh v. Secretary of State* (34 Cal. 470); *Maniharavade Venkayya v. Secretary of State* (27 Mad. 535); *Rajah Khettar Kristo Mitter v. Dinendra Narain Roy* (3 C. W. N. 202).

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

Code of Civil Procedure to apply to proceedings before Court.

COMMENTARY.

Cf. Act X of 1870, sec. 36. *Cf.* also Act V of 1908 (C. P. C.), sec. 141.

Section 53, it is presumed, is intended to apply to the hearing of references by the 'Court' the mode of trial and rules of procedure laid down in the Code of Civil Procedure, so far as they are not inconsistent with the provisions of this Act. It is not intended to increase the scope of the Act, or to confer any rights which the Act itself does not expressly confer.

This provision may be compared with sec. 141 of the Code which provides :—"The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction." This has been judicially explained thus :—"We do not think that section 647 (sec. 141) is intended to confer any rights of appeal not expressly given elsewhere by the Code. Its object is rather to apply to proceedings other than suits and appeals 'the procedure, that is the mode of trial, and the procedure incidental and ancillary thereto,' which the Code provides for suits and appeals generally : " *Ningappa v. Gangawa* (10 Bom. 433). See also *Hureenath Koondoo v. Modhoo Soodun Saha* (19 W. R. 122) ; and *Bansi Lal v. Collector of Saharanpur* (4 A. W. N. 88).

The terms of sec. 53, it has been held, are wide enough to allow of a party being added on a reference. "We see no reason for restraining the wide language of section 53, and the provisions of section 32 (O. 1, R. 10) of the Civil Procedure Code appear to be in no way inconsistent with anything contained in Act I of 1894 : " *Kishan Chand v. Jagannath Prosad* (25 All. 133).

The Code has also been made applicable to the non-appearance of parties at a reference with its consequences, under ss. 102, 103 (O. 1x, R. 8, 9) : *Bhandi Singh v. Ramadhin Roy* (10 C. W. N. 991) ; *Behary Lal Sur v. Nanda Lal Goswami* (11 C. W. N. 430) : and to the framing of issues under sec. 147 (O. xiv, R. 3) : *In re Land Acquisition Act* (20 Bom. 241).

Section 53 has been held to be comprehensive enough to admit the operation of the rules relating to 'discovery' (O. XI, R. 12) : *British India Steam Navigation Co. v. Secretary of State* (38 Cal. p. 250) : and to 'execution' and the enforcing of orders : *Nobin Kali Debi v. Banalata Debi* (32 Cal. 921).

As for the application of the principle of *res judicata* see under sec. 18, *ante*.

The revisional powers of the High Court under sec. 622 (s. 115), C. P. C., have been exercised where a Collector improperly refused to make a reference under sec. 18. Here, it was held that, although not a 'Court' within the meaning of the Code, he acted judicially : *Administrator-General of Bengal v. Land Acquisition Collector* (12 C. W. N. 241). See also *Shiva Sundari Dassi v. Collector of Cawnpur* (25 A. W. N. 220) ; and *Biswa Nath Sinha v. Bidhumukhi Dasi* (19 C. W. N. 1290).

And so also where a Collector refused to make a reference under sec. 49, his order was set aside by the High Court in its revisional jurisdiction, and he was directed to proceed according to law. "It would obviously be unjust that the Deputy Collector should refuse to obey the provisions of the Act and to provide no remedy for the correction of his mistaken action : " *Krishna Das Roy v. Collector of Pabna* (16 C. W. N. p. 328).

It has been held, moreover, that where a Collector's proceedings have been illegal or without jurisdiction, the High Court has power, even of its own motion, to inquire into the legality of his proceedings : *Shyam Chunder Mardraj v. Secretary of State* (35 Cal. 525). But neither the Code nor the Charter Act would entitle the High Court "to rectify what may be called executive or administrative injustice in contradistinction to judicial injustice : " *British India Steam Navigation Co. v. Secretary of State* (38 Cal. p. 242).

"Court."—See sec. 3(d), *ante*.

54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act.

Appeals in proceedings before Court.

COMMENTARY.

Ct. Act XIV of 1904. and Act XVIII of 1911.

This section provides the only means of contesting a Judge's 'award' or any part of it. It has nothing to do with a Collector's award, which is provided for elsewhere in the Act.

The expression 'award' has not been defined in the Act. It is therefore important to inquire what is meant by the term as used in this section. The only part of the Act which treats of an 'award of the Court' is Part III, and the only section which affords any indication of its character is sec. 26. That section imposes certain conditions which distinguish it from a 'Collector's award' under Part II. Part III treats of general references, while Parts IV and VI provide for special references on particular questions. The expression used in Parts IV and VI is not 'award' but "the decision of the Court," from which it may be concluded that the Legislature intended to draw a distinction between the two. If this be so, it follows that the 'decision of the Court' on a special reference under Part IV or VI is not an 'award' within the meaning of sec. 54, and was not intended to be so regarded. This view has been previously advanced in commenting on ss. 30, 35(3), and 37, and there is much to be said in its favour, though it is contrary to the views expressed in other text-books.

"Subject to the provisions of the Code of Civil Procedure."—In view of this provision it has been held in Bombay that where a claim was heard by an Assistant Judge and the amount in dispute did not exceed Rs. 5,000, the appeal lay to the District Judge and not to the High Court: *Ranchhodbhai v. Collector of Kaira* (33 Bom. 371). Following this ruling the same High Court has held further that no appeal lies to the High Court from the District Judge, by way of second appeal: *Nathubhai v. Manordas* (36 Bom. 360): *Ahmedbhoy Haribhoy v. Waman Dhondhu* (38 Bom. 337).

It is difficult to reconcile these rulings with the precise terms of the section which seems to imply that appeals shall lie to the High Court alone. And so it has been construed in Calcutta. "The Legislature has intentionally made all appeals in Land Acquisition cases lie to the High Court:" *Balaram Bhramaratar Ray v. Sham Sunder Narendra* (23 Cal. p. 531).

The 'award' referred to in sec. 54, is in the nature of a decree and is appealable as such. An appeal from a Judge's 'award' must be stamped in the same manner as an appeal from an original decree and pay the same court-fees: *Sheo Rattan Rai v. Mohan*

(21 All. 354). But the decree must be limited to the amount for which court-fees have been paid : *Mahomed Ali v. Secretary of State* (30 Cal. 501).

Where there were 44 appeals in which the parties were the same, the plots of land contiguous to one another, and forming part of one estate, although in the occupation of different tenants, it was held that the appeals might be consolidated, and the court-fee paid on the value of the consolidated appeals under sec. 17 of the Court Fees Act (VII of 1870) : *Kashi Prosad Singh v. Secretary of State* (29 Cal. 140). See also *Bombay Improvement Trust v. Jalbhoy* (33 Bom. 488).

An order of a Judge directing the payment of compensation-money, deposited in Court by the Collector under sec. 31(2), to a person who had no power to alienate the land, would be an 'award' and appealable under this section : *Sheo Rattan Rai v. Mohri* (21 All. 354).

Similarly where a Judge withheld payment and directed that the compensation awarded should be invested under sec. 32, it was held that the order was an 'award' and appealable as such : *Mahammad Ali Raja Avergal v. Ahammad Ali Raja Avergal* (26 Mad. 287) ; *Shiva Rao v. Nagappa* (29 Mad. 117) ; *Srimaty Trinayani Dassi v. Krishnalal De* (17 C. W. N. 933, 935).

But an order for refund of compensation-money, paid away by a Judge under a misapprehension, is not an 'award' nor appealable under sec. 54 : *Nobin Kali Debi v. Banalata Debi* (32 Cal. 921).

Nor is an order made by a Judge rejecting an application by a person claiming to be made a party to the proceeding appealable under this section : *Golap Khan v. Bolanath Marick* (12 Cal. L. J. 545). See also *Mulraj Khatan v. Collector of Poona* (15 Bom. L. R. 802) ; and *Biswa Nath Sinha v. Bidhumukhi Dasi* (19 C. W. N. 1290). But see under sec. 53, *ante*.

The right to appeal under sec. 54 is well defined. The order complained of must be either an award or part of an award, and nothing else : *per* Jenkins, C. J., in *Hasun Molla v. Tasiruddin* (39 Cal. 393).

Before interfering with an award the Court must be clearly satisfied that it is substantially erroneous. "Apart from the general principle which restrains a Court of Civil Appeal from interfering with any decree unless it is satisfied that that decree is wrong, we have here two special considerations which should deter

us from lightly disturbing the award under appeal. One of these considerations is that the matter in dispute is one where absolute precision or mathematical accuracy is not attainable ; and the other consideration is that the tribunal of appeal has acquired long and valuable experience in these matters of valuation, with which alone the present controversy is concerned : " *Trustees for the Improvement of Bombay v. Karsandas* (33 Bom. p. 29).

" If it be as was said by Lord Brougham in *Earl of Bandon v. Becker* (3 Cl. & Fin. at p. 512) ' that a Court of appeal ought never to reverse the judgment of an inferior Court unless quite confident that the judgment given in the Court below is wrong,' then in this case we should be especially sure of our ground before we interfere when regard is had to the questions that arise and the fitness of the tribunal for their decision. Though we are in no sense bound by the determination of the Tribunal, its opinion is entitled to the greatest weight on the matters which arise in this appeal, and its award is not lightly to be set aside : " *per Jenkins, C. J., in Anandav Vinayek v. Secretary of State* (29 Bom. pp. 571-2).

An award cannot be said to be complete or final unless it is a decision on all the issues raised on the reference : *Ardeshir Mancherji v. Assistant Collector, Poona* (10 Bom. L. R. 517).

" Court."—See sec. 3(*2*), *ante*.

Appeals from the Tribunals in Calcutta and Bombay are regulated by special Acts (XIV of 1904 and XVIII of 1911). See *Appx. A & B, post*.

No further appeal is provided by the Act from the award or decision of the High Court. The Privy Council have held, accordingly, that no appeal will lie as of right, even where a certificate has been granted under sec. 109, C. P. C. " A special and limited appeal is given by the Land Acquisition Act from the award of the ' Court ' to the High Court. No further right of appeal is given, nor can such right be implied." Sec. 53 " applies to an earlier stage in the proceedings and seems to have nothing to do with an appeal from the High Court." Sec. 54 carries the matter no further. " It only applies to proceedings in the course of an appeal to the High Court. Its force is exhausted when the appeal to the High Court is heard : " *per Lord Macnaghten in Rangoon Botatoung Co. v. Collector of Rangoon* (40 Cal. 21).

It is to be observed, however, that the appeal in this case involved " a mere question of fact." Sec. 112, C. P. C., moreover provides that " nothing contained in this Code shall be deemed

to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever."

It is further ordained by the Letters Patent granted to the various High Courts in India (s. 39) that any person may appeal to His Majesty in Council in any matter, not being of criminal jurisdiction, from any final judgment, decree, or order of such High Court made on appeal, and from any final judgment, decree or order made in the exercise of its original jurisdiction from which no appeal lies to the said High Court.

It would appear, therefore, that the Privy Council have the power to entertain an appeal, but findings as to valuation would not be open to question, unless some principle were involved: *see* Lord Collins in *Secretary of State v. India General Steam Navigation Co.* (36 Cal. 967).

See also *Ezra v. Secretary of State* (32 Cal. 605), where the appeal was heard at length and the decision of the High Court affirmed; and *Merwanji Mancharji v. Government of Bombay* (16 Bom. L. R. 55) where the order of the High Court was reversed. Appeals and cross appeals were also heard by special leave by the Privy Council from a decree of the Zanzibar Court made under this Act, which is applicable to Zanzibar, in the case of *Secretary of State for Foreign Affairs v. Charlesworth Pilling & Co.* (L. R. 28 I. A. 121).

And see also *Secretary of State v. British India Steam Navigation Co. Ltd.* (15 Cal. L. J. 5n), where an application for special leave to appeal was heard and rejected.

Orders passed by a High Court in the exercise of its revisional jurisdiction, under the Code (s. 115) or the Charter Act (s. 15), are appealable to the Privy Council only if they are 'final orders within the meaning of sec. 39 of the Letters Patent (28 & 29 Vic., c. 15): *Secretary of State v. British India Steam Navigation Co.* (15 C. W. N. 848). The same view was taken by the Privy Council (15 Cal. L. J. 5n).

But see, on the other hand, *Special Officer, Salsette Building Sites v. Collector of Thana* (17 C. W. N. 421). In this case an application was made to the Privy Council for leave to appeal against an award of the Bombay High Court on the strength of the Letters Patent (s. 39), which, it was contended, distinguished it from the Rangoon case (*supra*), but leave was refused.

55. (1) The Local Government shall [subject to the control of the Governor-General in Council] have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall be published in the official Gazette, and shall thereupon have the force of law.

COMMENTARY.

Cf. Act X of 1870, sec. 59.

Sub-sec. (1).—The clause within brackets has been added by the Decentralization Act (IV of 1914).

"*Local Government.*"—See under sec. 3(c), *ante*.

"*Consistent with this Act.*"—If they were not consistent with the Act they would be *ultra vires*: *Ezra v. Secretary of State* (30 Cal. 36).

Sub-sec. (2).—This provision was added by the Select Committee (see Third Report, cl. 13, *Appx. D*).

Sub-sec. (3).—Such Rules required the sanction of the Governor-General in Council to give them 'the force of law,' but this has now been altered by Act IV of 1914. Rules have been framed under this section by the Governments of Bengal, Bombay, Burma, the Central Provinces, Madras, the Punjab and the United Provinces; but they consist mostly of instructions issued for the guidance of officials and are not of general interest. They may be found in the respective 'Manuals' of each province. For the Bengal Rules, see *Appx. E, post*.

THE
LAND ACQUISITION (MINES) ACT, 1885.

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THE
LAND ACQUISITION (MINES) ACT.
ACT XVIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.

*(Received the assent of the Governor-General on the 16th
October, 1885.)*

*An Act to provide for cases in which Mines or
Minerals are situated under land which it is desired
to acquire under the Land Acquisition Act [1894].*

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, [1894]; It is hereby enacted as follows:—

<p>Short title, com- mencement and local extent.</p>	<p>I. (1) This Act may be called the Land Acquisition (Mines) Act, 1885; and</p>
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(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

COMMENTARY.

Cf. Act XXII of 1863, ss. 50, 51. Cf. also 8 & 9 Vic., c. 20, ss. 77-85; 10 & 11 Vic., c. 17, ss. 18, 22-6; 46 & 47 Vic., c. 37, s. 3.

The object of this Act is to make provision for the grant of compensation to the owners of mines situated under land sought to be acquired for the construction of railways and other works, which are not required for that purpose, in cases where the owners are prevented or restricted from working them (see *Appx. D*).

The substance of this measure was previously embodied in two sections of the Act of 1863, which, for some unaccountable reason, were omitted from the Act of 1870 which repealed it. This Act was therefore introduced in 1885 to repair the omission (see Introduction). Act X of 1870 having been repealed by Act I of 1894, all references to the repealed Act must be deemed to be made to the Act which is now in force (see s. 2), and this Act must be "read with and taken as part of" it (see s. 17, *post*).

The original provisions, however, of 1863 have been altered considerably, and the new Act is admittedly modelled on the Railway Clauses Consolidation Act, 1845 (8 & 9 Vic., c. 20, ss. 78-85), a measure dealing specially with railways.

"The old law (Act XXII of 1863)," said the Hon'ble Member in charge of the Bill, "was imperfect in one respect; that is to say, it left it entirely doubtful whether, in the event of taking land which was underlaid with minerals, it was necessary to compensate the owner for the full value of the minerals there, or only for any amount of loss which might be incurred by him in the case of a railway passing over his land. In the new law we propose to follow the English law in the main, and to reserve to the State the option either to take the whole of the property including the minerals underground, or to leave the owner to work the minerals below as he pleases, or to impose suitable restrictions upon his working, with a view to prevent the surface from falling in, and to compensate him for any loss which such restrictions may entail on him."

Provisions precisely similar to those contained in the Railway Clauses Act were introduced into the Waterworks Clauses Act, 1847 (10 & 11 Vic., c. 17, ss. 22-26), and these again have been incorporated in the Public Health Act, 1883 (46 & 47 Vic., c. 37, s. 3).

This Act, it will be observed, is intended to apply generally to all works of a public nature. It is moreover probable that, like the provisions referred to in the English Acts, it was intended to form a complete code dealing with the rights and liabilities of mine-owners in cases where land is acquired for public purposes.

Referring to the Railway Clauses Act of 1845 Lord Cranworth observed, "It was obviously the intention of the Legislature in making these provisions to create a new code as to the relation between mine-owners and railway companies, where lands were compulsorily taken for the purpose of making a railway. The object of the statute evidently was to get rid of all the ordinary law on the subject, and to compel the owner to sell the surface, and, if any mines were so near the surface that they must be taken for the purposes of the railway, to compel him to sell them, but not to compel him to sell anything more. The land was to be dealt with just as if there were no mines to be considered; nothing but the surface:" *Great Western Railway Co. v. Bennett* (L. R. 2 H. L. at p. 40).

These views were approved by Lord Herschell in *Midland Railway Co. v. Robinson* (L. R. 15 A. C. at p. 27).

They were interpreted by Rigby, L. J., as follows:—"It is to be observed that though Lord Cranworth uses the word 'surface,' it is plain that he only uses it as a convenient phrase to express, not merely the upper crust of soil, but all except minerals which are not taken by the Company. I think we may read in the passage, in the place of 'surface,' 'land taken by the company,' whether it includes merely the upper crust or also other subjacent strata:" *In re Lord Gerard & London and North-Western Railway Co.* ([1895] 1 Q. B. at p. 470).

Lord Esher, in the same case, observed:—"It appears to me that that group of sections is the law by which in such a case the rights and objections of both parties are to be determined, to the exclusion of any common law right that might otherwise arise from the relation between the parties. The rights which arise from that relation are statutory, and all questions, both as regards compensation and other matters, are to be governed by the Act of Parliament. I should put that construction on the Act without authority, but I think that the case of *Holliday v. Mayor of Wakefield* in the House of Lords is a conclusive authority in favour of it. The proposition which I have laid down seems to me to be stated in express terms by Lord Watson, and also, though not so explicitly, by Lord Halsbury" (at p. 464).

The case cited, *Holliday v. Mayor of Wakefield* ([1891] A. C. at pp. 93, 96), was a decision upon the corresponding 'Mines Clauses' of the Waterworks Clauses Act of 1847 (10 & 11 Vic., c. 17, ss. 22-26), which are almost the same as in the Railway Clauses Act.

"These provisions are to be regarded as statutory codes as to the relative rights of mine-owners and companies where lands are compulsorily taken under Acts incorporating these sections, and are in substitution for the common law : " Lord Halsbury's 'Laws of England,' Vol. VI, p. 50.

"*Mines or minerals.*"—"The primary meaning of the word 'mine' standing alone is an underground excavation made for the purpose of getting minerals, as in *Bell v. Wilson* (L. R. 1 Ch. 303). 'Minerals,' on the other hand mean primarily all substances (other than the agricultural surface of the ground) which may be got for manufacturing or mercantile purposes, whether from a mine, as the word would seem to signify, or such as stone or clay which are got by open working, as decided in *Hext v. Gill* (L. R. 7 Ch. 699). The particular signification of each of these words may be varied largely by the context : " *per Kay, J.*, in *Midland Railway Co. v. Haunchwood Brick and Tile Co.* (L. R. 20 Ch. D. p. 555).

In *Bell v. Wilson* it was held that 'mines' are underground workings. In *Hext v. Gill* it was observed that "whatever may be the meaning of the word 'mines' when used alone, the putting the word 'mines' before 'minerals' does not restrict the meaning of the word 'minerals.' The result of the authorities appears to be this : that a reservation of 'minerals' includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the Court to give it a more limited meaning : " *per Mellish, L. J.* (*Id.* at p. 712).

This definition was cited by Lord Esher, M. R., with approval, in *Earl of Jersey v. Neath Guardians* (L. R. 22 Q. B. D. 555), where it was held that there being nothing in the context to show that the reservation should have a more limited meaning, 'minerals' included brick, earth and clay.

The same rule was previously stated in similar terms by Lord Romilly, M. R., thus :—"Everything except the mere surface which is used for agricultural purposes ; anything beyond that which is useful for any purpose whatever, whether it is gravel, marble, fire-clay, or the like comes within the word mineral, when there is a reservation of the mines or minerals from a grant of land ; every species of stone, whether marble, limestone or ironstone, comes within the same category : " *per Lord Romilly, M. R.*, in *Midland Railway Co. v. Checkley* (L. R. 4 Eq. at p. 25).

“ ‘ Mines ’ and ‘ minerals ’ are not definite terms : they are susceptible of limitation or expansion, according to the intention with which they are used : ” *per* Lord Watson in *Lord Provost of Glasgow v. Fairie* (L. R. 13 A. C. at p. 675).

“ What then is the interpretation to be put upon the word ‘ mines ’ ? I think the primary idea suggested to the popular mind by the use of the word is an underground working in which minerals are being or have been wrought. The word ‘ mines ’ is, in a secondary sense, very frequently applied to a place where minerals commonly worked under ground are being wrought, though in the particular case the working is from the surface. For example, where iron is got by surface workings they are spoken of as iron mines, and so, too, coal which crops out at the surface.”

“ The word ‘ minerals ’ imports *primâ facie*, and apart from any context, all substances other than the vegetable matters forming the ordinary surface of the ground. In this widest sense clay is unquestionably a mineral.” “ I think the reservation must be taken to extend to all such bodies of mineral substances, lying together in seams, beds or strata, as are commonly worked for profit, and have a value independent of the surface of the land : ” *per* Lord Herschell (*Id.* pp. 683-6).

“ I cannot help thinking,” said Lord Halsbury, L. C., in the same case, “ that the true test of what are mines and minerals in a grant was suggested by James, L. J., in the case of *Hexl v. Gill* ; that a grant of ‘ mines and minerals ’ is a question of fact ‘ what these words meant in the vernacular of the mining world, the commercial world, and landowners, at the time when they were used in the instrument.’ “ There is no doubt that more scientific investigation of the substances of the earth and different modes of extracting them have contributed to render the sense of the word ‘ minerals ’ less certain than when it originally was used in relation to mining operations,” (*Id.* at p. 669).

The interpretations enunciated in *Fairie’s Case* were followed in *Midland Railway Co. v. Robinson* (L. R. 15 A. C. p. 26).

More recently it has been held that though a mineral *primâ facie* includes anything lying under the land which has a value of its own, as capable of being used independently of the land, yet that rule may be modified by the circumstances of the case. Clay forming the surface or subsoil and constituting ‘ the land ’ purchased

was held in that case to be not a 'mineral' within the meaning of the Railway Clauses Act, 1845, as interpreted in *Fairie's Case*: *Great Western Railway Co. v. Blades* ([1901] 2 Ch. 624).

This construction was approved by the Court of Appeal in *Todd Birleston & Co., and North Eastern Railway, In re* ([1903] 1 K. B. 603). The ratio of both cases appears to be that the clay in question was comprised in the soil which constituted the 'land' compulsorily taken for the purposes of the undertaking, and could not for that reason be treated as a 'mineral' within the meaning of the Act or be included in the reservation. But on the other hand where China clay occupied only a small fraction of the subsoil it was held to be a mineral and within the purview of the reservation under the Act. The decision in *Fairie's Case* was distinguished and explained by Cozens Hardy, M. R., thus:—"I take that case as finally deciding that where a bed of clay underlies the surface, and is the ordinary soil of the whole district in which the land is situate, such clay, though it might elsewhere be a mineral, is not within the statutory reservation to the vendor, but passes to the railway company as part of the land which was conveyed to the railway company:" *Great Western Railway v. Carpalla United China Clay Co.* ([1909] 1 Ch. at p. 229).

This was affirmed by the House of Lords, where it was held that as on the evidence the "China clay was not part of the ordinary composition of the soil in the district, and its presence was rare and exceptional," it was a mineral within the meaning of the Act: *per* Lord Macnaghten (S. C. [1910] A. C. 83).

More recently the House of Lords decided that sandstone is not a mineral within the meaning of the Railway Clauses Act of 1845. In this case the whole of the case-law on the subject was exhaustively reviewed by Lord Loreburn, L. C., Lord Gorell and Lord Shaw. The conclusion arrived at by Lord Loreburn was that "it is not possible to extract any uniform standard:" *North British Railway v. Budhill Coal and Sandstone Co.* ([1910] A. C. 116).

"It is impossible," he said, "to give an exhaustive definition of the meaning of the much debated words that are to be found in s. 70. In the first place, I think, it is clear that by the words 'or other minerals' exceptional substances are designated, not the ordinary rock of the district. In the second place, I think that in deciding whether or not in a particular case exceptional substances

are minerals the true test is that laid down by Lord Halsbury in *Lord Provost of Glasgow v. Fairie* (L. R. 13 A. C. 657). The Court has to determine 'what these words meant in the vernacular of the mining world, the commercial world, and landowners, at the time when the purchase was effected, and whether the particular substance was so regarded as a mineral.' (*Id.* at p. 127). Lord Gorell after reviewing the interpretations of Lord Romilly, Lord Watson, Lord Herschell and Sir G. Mellish (*supra*) also endorsed the views of Lord Halsbury in *Fairie's Case*, originally enunciated by Lord James in *Hext v. Gill*.

In a still later case the House of Lords has held that the term 'minerals' in the same Act includes seams of fire-clay, as distinguished from ordinary clay, and valuable for the manufacture of bricks of a high quality. The ratio of this decision appears to have been that the particular seam was "of an exceptional character as to its properties and value," and was a 'mineral' "as understood in the vernacular of the mining world, and the commercial world, and the landowner:" *per* Lord Loreburn, L. C., in *Caledonian Railway v. Glenboig Union Fireclay Co.* ([1911] A. C. at p. 299).

Whether a particular substance is or is not a 'mineral' within the meaning and for the purpose of the Act is a question of fact to be determined by the evidence: *Symington v. Caledonian Railway* ([1912] A. C. 87).

Sub-sec. (1).—This measure notwithstanding its title has nothing to do with acquisition. It is purely a law of compensation. The 'Mines Compensation Act' would perhaps have been a more appropriate description.

As to the proper method of construing Acts, see the remarks of Lord Herschell, under Act I of 1894, sec. 3, *ante*.

Sub-sec. (3).—The territories administered by the Lieutenant-Governor of Bengal in 1885 were the three provinces of Bengal, Bihar and Orissa. The local extent of the Act remains the same though the administration of the provinces has been altered. The clause must now be read 'the Governor of Bengal in Council and the Lieutenant-Governor of Bihar and Orissa.'

The Act was first extended to Bengal and Madras only, in deference to the objections made by some of the other Local Governments that such a measure was unnecessary in their provinces. To meet these objections its application was limited to these two

provinces, while power was given to other Local Governments "to extend it to the whole or any part of the territories administered by them if they think fit" (see *Report, Appx. D*).

The Act has been specially extended to the Santhal Perganas (by Reg. III of 1886).

It has also been extended to Angul and the Khondmals (by Reg. I of 1894).

"*Local Government.*"—See under sec. 3(c), Act I of 1894, *ante*, and sec. 14, *post*.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

Saving for mineral rights of the Government.

COMMENTARY.

In Bengal the effect of the Permanent Settlement (Reg. I of 1793) has been to vest all mineral rights in the Zemindars or land-holders. This Regulation is in force throughout the provinces of Bengal, Bihar and Orissa, except in the Scheduled Districts (see Act XV of 1874), though it has been extended to the Sonthal Perganas (Reg. III of 1872).

Similarly in Madras, the Permanent Settlement Regulation (XXV of 1802), which is framed on the same lines, purports "to grant to Zemindars and other land-holders, their heirs and successor a permanent property in their land in all time to come." This Regulation has been declared to be in force throughout the Presidency of Madras, except in the Scheduled Districts (Act XV of 1874). It has, however, been extended by notification in 1898 to the scheduled districts of Ganjam and Visigapatam (Act XIV of 1874).

The 'right of the Government to any mines or minerals' in the provinces of Bengal and Madras can therefore only be said to exist in districts which have not been permanently settled.

When the Bill was introduced the Hon'ble Member in charge stated that though at one time it was 'supposed that all minerals in India were the property of the State' it was now well accepted "that the State is not ordinarily the owner of minerals in permanently settled estates," and that if lands were required for railways therein it was necessary to acquire and deal with rights to minerals as well as rights to the surface of the soil.

3. (1) When the Local Government makes a declaration under section 6 of the Land Acquisition Act [1894], that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act [1894], and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section [31] of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section [11] of that Act, insert such a statement in his award ;

(b) when he makes a reference to the Court under section [18] of that Act, insert such a statement in his reference ; or

(c) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the Governor-General in Council may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

COMMENTARY.

Cf. Act XXII of 1863, s. 50. *Cf.* also 8 & 9 Vic., c. 20, s. 77.

This section prescribes the ways in which the intention of the Local Government to exclude 'mines and minerals' from acquisition may be notified. It may be done at the very outset of the proceedings by inserting a statement to that effect in the 'declaration' made under sec. 6 (Act I of 1894), or it may be done subsequently by the Collector in the manner provided in this section. The result of either method of notification will be the same, *viz.*, the exclusion of such property from the 'land' acquired, excepting only such surface minerals as may be used in the construction of the proposed work.

Sub-sec. (1).—For a description of the 'declaration' referred to, see Act I of 1894, sec. 6, *ante*.

"*Local Government.*"—See under sec. 3(c).

"*Public purpose.*"—See under sec. 3(f).

"*Company.*"—See sec. 16(b), *post*.

"*Mines or minerals.*"—These are specified in sec. 3 (1) as 'mines of coal, iron-stone, slate or other minerals,' in accordance with the English statute. "The words 'mines of' have relation not only to the word 'coal' but to 'iron-stone, slate, or other minerals' also:" *per* Lord Herschell in *Midland Railway Co. v. Robinson* (L. R. 15 App. Cas. at p. 26).

In construing the same group of sections (77-85) of the Railway Clauses Act of 1845, Kay, J., observed—"Those words are susceptible of two meanings. They may mean 'mines of coal, mines of iron-stone, mines of slate, or mines of other minerals;' or they may mean 'any mines of coal, any iron-stone, or any slate, or any other minerals,' confining the word 'mine' to coal, and using it as meaning both the coal and the workings:" *Midland Railway Co. v. Haunchwood Brick and Tile Co.* (L. R. 20 Ch. D. at p. 555).

"But whichever of these two interpretations be adopted," he added, "the next words, 'except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works,' put it beyond doubt that 'mines' does not mean merely underground excavation, but certainly includes some minerals," *e.g.*, stone and clay. See also under sec. 1, *ante*.

Sub-sec. (2).—If no statement has been inserted in the Government 'declaration' the Collector can take action under this provision. This may be done (a) when he makes his 'award,' (b) when he makes a 'reference' under Part III, or (c) when he takes possession under sec. 17. It is presumed the last statement would be

notified in the same manner as the 'declaration' (under sec. 6), *i.e.*, in the 'official Gazette.'

The object of this provision, which was introduced by the Select Committee, was stated to be to give the Government more time for deliberation. "We have accordingly," they said, "empowered the Collector, who in such a matter would of course act under the control of the Government, to exclude the minerals from the acquisition at any time up to the stage of the proceedings at which the land vests and it is no longer in the discretion of the Government to recede from the transaction" (see *Appx. D*).

"Collector."—See sec. 3(c), Act I of 1894, *ante*.

"Court."—See sec. 3(d).

"Land."—See sec. 3(a).

Sub-sec. (3).—A statement made in a Collector's 'award,' or in a 'reference,' would appear to be a sufficient publication, and to have the same effect as a statement inserted in the Government 'declaration.' The effect of a statement so notified would be to prevent the 'mines or minerals' vesting in the Government along with the surface land which was sought to be acquired. It would follow from this that if no statement is made the mines will be included in the acquisition.

Act XXII of 1863 contained an express provision (sec. 50), corresponding with section 77 of the Railway Clauses Act of 1845, which was as follows:—"Whenever land shall be taken under this Act for the construction of any work, the taking thereof shall not be held to convey or include the right to any mine of coal, or other minerals, lying under such land, except only such part thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless compensation for the same shall have been expressly allowed in the award made in favour of the persons interested in the land." The omission of so important a provision from the present Act, when the measure was being recast on the lines of the English statute, could not have been unintentional. But whatever be the case, it is abundantly clear that the effect of the omission is to create a divergence between the English and the Indian laws on a point of some importance.

The difference appears to be this, that whereas under the English Act 'mines or minerals,' unless expressly mentioned, will not pass with the land acquired, under this Act they would certainly pass, unless prevented from doing so by a statement duly notified

in the manner provided by sec. 3. The new provision would seem to have been introduced advisedly to take the place of the former one.

Under the Railway Clauses Consolidation Act of 1845 (8 & 9 Vic., c. 20, ss. 6, 78) it has been held that the term 'lands' as used in that Act includes 'mines.' "Of course 'lands' includes 'mines,' and I read this therefore as a general provision that all persons interested in the mines shall be compensated for the amount of their interests therein:" *per* Lord Cairns, L. C., in *Smith v. Great Western Railway Co.* (L. R. 3 App. Cas. p. 180).

This view was endorsed by the House of Lords in a case under the Waterworks Clauses Act of 1847 (10 & 11 Vic., c. 17, ss. 6, 22) in which the 'mines clauses' are very similar. In this case Lord Bramwell observed "I am of opinion that 'lands' in sec. 6 includes mines. The words in the interpretation clause are the same as in the Railways Clauses and the Lands Clauses Acts: Lord Cairns in *Smith v. Great Western Railway Co.* so held. Lord Halsbury, L. C., said "I cannot doubt that the word 'lands' does include 'mines and minerals'." Lord Watson said "The point appears to me to be placed beyond doubt by the observations of the Lord Chancellor (Earl Cairns)." Lord Herschell remarked "The word includes 'tenements, hereditaments, and heritages of any tenure,' and I think this language is large enough to cover mines." See *Holliday v. Mayor of Wakefield* ([1891] A. C. 81).

And again in a later case Lord Esher, M. R., observed "The land which they so proposed to take included, not merely the surface, but land below the surface. There were below the surface of the land various minerals, such as gravel and clay, and also coal. The company's notices did not include the coal, but included the other minerals. That which they so proposed to take was none the less land because part of it consisted of minerals. It has been determined by authority, and I think it would be clear without authority, that the word 'land' in the Railway Clauses Consolidation Act does not mean merely the surface or superficial crust of the land. The Act does not use the term 'surface.' The word 'land' means any land, including minerals, which the company propose to take. What they take, they take as 'land.' The law allows them to take the whole or a portion of the land. If any portion of the land is composed of mines or minerals, they may take the rest of the land and leave those mines or minerals:" *In re Lord Gerard & London and North-Western Railway Co.* ([1905] 1 Q. B. p. 464).

4. If the person for the time being immediately entitled to work or get any mines, or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

Notice to be given
before working mines
lying under land.

COMMENTARY.

Cf. Act XXII of 1863, s. 51. *Cf.* also 8 & 9 Vic., c. 20, s. 78; 10 & 11 Vic., c. 17, s. 22; 46 & 47 Vic., c. 37.

This section provides that the owner of the underlying 'mines or minerals,' which, it is presumed, have been excluded from the acquisition under the provisions of sec. 3, shall, if he is desirous of working them himself, give notice to the Local Government of his intention to do so. The Government may then proceed in the manner provided by sec. 5, or not, as they think fit.

"*The person for the time being immediately entitled.*"—This expression appears to be based on the dictum of Lord Cairns in *Smith v. Great Western Railway Co.* (L. R. 3 App. Cas. p. 178). "It is perfectly clear that what is contemplated by the Legislature under the section (s. 78) is, that some person who, at the time of giving the notice which it contemplates, is entitled to work the mines is the person who is entitled to give the notice."

The equivalent expression employed in subsequent sections (7-14) is 'owner, lessee, or occupier.' This expression is also employed throughout the English Acts in corresponding sections.

"*Mines or minerals.*"—See under ss. 1, 3, *ante*.

It has been held that an owner need not work the minerals himself so long as he has a real and *bonâ fide* desire to work them either by himself or by his lessees or licensees: *Midland Railway Co. v. Robinson* (L. R. 15 App. Cas. 19).

"*Local Government.*"—See under sec. 3(c), Act I of 1894, *ante*.

When the land is acquired for a 'local authority' or a 'company' (see s. 16) the notice must be given to one or the other, as the case may be, and not to the 'Local Government' (see s. 14).

5. (1) At any time or times after the receipt of a notice under the last foregoing section, and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

Power to prevent or restrict working.

(2) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish, in such manner as the Governor-General in Council may, from time to time, direct, a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

COMMENTARY.

Cf. Act XXII of 1863, s. 51. *Cf.* also 8 & 9 Vic., c. 20, s. 78; 10 & 11 Vic., c. 17, s. 22; 46 & 47 Vic., c. 37.

Section 5 gives the Local Government the opportunity of ascertaining by inspection whether the working of the mine by the owner is likely to cause any damage to the surface of the land acquired. This may be done at any time, either before or after the workings have commenced.

They will then decide whether to allow the working of the mine to proceed, stop it altogether, or partly restrict it. In either of the last two events compensation must be paid to the owner for the loss which he sustains, and a 'declaration' published stating that the Government are willing to pay it. The immediate effect of such a 'declaration' will be to stop or restrict the working of the mine, as the Government may require. But when the land is acquired for a 'local authority' or a 'Company' (see s. 16) action will be taken by such 'local authority' or 'Company,' as the case may be, instead of by the 'Local Government' (s. 14). This is more in accordance with the English law.

Sub-sec. (1).—The Local Government is not restricted from taking action under this section after the period of sixty days prescribed in the notice has expired, nor is the owner, on his part, restrained from commencing the working of the mine.

"*Local Government.*"—See* under sec. 3(c), Act I of 1894, *ante*, and sec. 14, *post*.

"*Whether before or after the expiration of the said period.*"—These words were added by the Select Committee with a view to express "in a clear and unmistakable way the effect of the English Act as construed by the House of Lords" in the important case of *Dixon v. Caledonian Railway Co.* (5 App. Cas. 820). The opposite view, they thought, might involve serious consequences (see *Appx. D*).

Under the Railway Clauses Act of 1845 it was held by Lord Chelmsford, L. C., that "If the company desires to postpone the purchase of the mines until it is known that they are to be worked, the company is enabled to do so with perfect safety from the protection afforded by the 78th section, which compels the mine owner whose mines lie under the railway, or within a certain distance of it, who is desirous of working the same 'to give thirty days' notice of his intention, and the company may then cause the mines to be inspected, and if it appear that the working of the mines is likely to damage the railway, and if the company be willing to make compensation for the mines to the owner, he shall not work or get the same. This section appears to me to leave the mine-owner free to work his mines exactly as he would if the surface belonged to him, unless the railway company chooses to prevent him by expressing willingness to make him compensation :'" *Great Western Railway Co. v. Bennett* (L. R. 2 H. L. at p. 38).

Sub-sec. (2).—Under this clause the Local Government takes action by publishing a 'declaration' of its willingness to pay compensation, if they desire to stay or restrict the working of the mine. Under the English Acts action is to be taken by companies, by issuing a 'notice to treat' or 'counter notice,' which has the same effect.

"*Likely to cause damage to the surface.*"—It has been held that a company after giving 'notice to treat,' has the right to determine, at any time, whether damage is likely to be caused to their works, and that therefore it would be unjust to attempt to assess compensation before the contingency arose. Where a mine-owner claimed compensation from a railway company in respect of coal which he alleged could not be got 'without interfering with those minerals which had become the property of the company, and without destroying the support afforded by the coal to them, it was held that the time had not arrived when compensation was assessable.' "It may be that the coal-owner will never want to get it. The price of coal might go down, and, under the circumstances that might arise in the future, having regard to the character of the coal it might not be worth the owner's while ever to work the mines. That being so, is it reasonable that the owner should at once be paid a large sum of money for being prevented from getting the coal?" *per* Lord Esher, M. R., *In re Lord Gerard and London and North-Western Railway Co.* ([1905] 1 Q. B. 459).

A mine-owner cannot compel a company to take or pay compensation for a mine, nor is he entitled to claim any compensation until his working is actually stopped. "When the mine-owner does work, when an interference with the mining operations is actually made, then I think he will be entitled to litigate that question and claim compensation; but until that contingency arises he has no claim:" *per* Lord Halsbury, L. C., in *Holliday v. Mayor of Wakefield* ([1891] A. C. at p. 94).

"It would be hard to call upon a railway company in the first instance to pay for minerals which may never be worked. Policy, equity, and expediency all requires that the question of compensation for the minerals should be reserved until they are about to be worked:" *per* Cockburn, C. J., in *Fletcher v. Great Western Railway Co.* (29 L. J. Ex. 253).

An important distinction is observed in the English cases on this subject, between the rights and obligations that arise out of a

voluntary sale of land and those created by compulsory purchase under the general statute. "You are not to apply, to a case where there is no right to support under the Act the considerations which you are to apply where there is a right to support because the rights lie in contract : " *per* Buckley, J., in *Great Western Railway Co. v. Blades* ([1901] 2 Ch. at p. 634).

In other words, when land is acquired under the Act, the rights and obligations of the parties are regulated by the Act, and not by the ordinary law.

The rights of an ordinary purchaser under a voluntary conveyance have been very clearly defined by the House of Lords. It was laid down that a conveyance of land to a railway company for the purposes of the line gives a right by implication to all reasonable subjacent and adjacent support connected with the subject-matter of the conveyance, and, therefore, although the minerals are reserved, the grantor is not entitled to work them even under his own land, in any manner calculated to endanger the railway. This principle operates, so as "to prevent a person who has granted a part of his land from so dealing with that which he retains as to cause that which he has granted to sink or fall : " *per* Lord Cranworth, L. C., in *Caledonian Railway Co. v. Sprot* (2 Macq. H. L. at p. 451).

The same principle applies whether the conveyance is a voluntary bargain between the parties, or is made under the authority of a private or special Act. "Whether voluntary or compulsory every grant must carry with it all that is necessary to the enjoyment of the subject-matter of it ; and therefore if a certain amount of lateral support is essential to the safety of the railway, the right to it must pass as a necessary incident to the grant : " *per* Lord Chelmsford, L. C., in *Elliot v. North Eastern Railway Co.* (10 H. L. C. at p. 356).

This principle was more fully explained in a later case, where it was held that, when by a private Act an express statutory right is given to make and maintain something requiring support, the statute, in the absence of a controlling context, must be taken to mean that the right to support shall accompany the right to make and maintain : *London and North-Western Railway Co. v. Evans* ([1893] 1 Ch. 16).

Lord Bowen there summarised the effect of the earlier cases thus :—"In dealing with an ordinary grant of lands it is undoubted law that when such a grant is made for a specific purpose, such as

the construction on the lands of a house, canal, railway or other permanent work, the grant, in the absence of a contrary intention appearing on its face, carries with it by implication the right of reasonable and necessary support for the works so to be erected, from the subjacent or adjacent lands of the grantor. The maxim of law and of good sense applies whether the grant is voluntary or under the compulsory powers of a statute. When we pass from private grants between individuals to titles and rights created by an Act of Parliament, the exact subject-matter is altered, but similar rules of good sense and law obtain when we have to interpret sections which do not expressly decide the matter. These canons do not override the language of a statute where the language is clear; they are only guides to enable us to understand what is inferential. Where an express statutory right is given to make and maintain a thing necessarily requiring support, the statute in the absence of a context implying the contrary, must be taken to mean that the right to necessary support of the thing constructed shall accompany the right to make and maintain it " (at p. 27).

The same views were expressed by Smith, L. J.—" It is settled law that where minerals are severed from the surface by deed, instrument, or Act of Parliament, the mineral owner is not entitled to let down the surface, unless by the deed, instrument, or Act of Parliament by which the minerals are severed it appears that the surface owner has parted with the right of support, or, in other words, that the mineral owner's right to get the minerals is thereby limited to getting them in such a manner as not to occasion injury to the surface owner." " This proposition," he continued, " appears to be one which is irresistible, for it is impossible to suppose in the premises mentioned that the Legislature contemplated that the mineral owner might let down and destroy the works authorized to be constructed for the benefit of the public."

But the ratio of these remarks, it will be observed, is that these canons of construction are not to override the express terms of a statute, and that it is only in the absence of a context implying the contrary that they are to be applied. It would follow from this that when the provisions of the Railway Clauses Act, or other cognate measure, are incorporated in a special Act they would control the relations of parties. This had not been done in either of the two cases cited above.

In the case of *Great Western Railway Co. v. Cefn Cribbrw Brick Co.* ([1894] 2 Ch. 157) the position was peculiar. There the land was acquired under a special Act of 1825 for the construction of a tramway. By another special Act of 1855 the tramway was vested in another company with power to convert the tramway into a railway. The special Act of 1855 incorporated the Railway Clauses Act of 1845, repealing the special Act of 1825, but without prejudice to existing rights and liabilities, or to anything already done under it. It was held, in view of the saving clause, that the Act of 1855 did not operate to alter the express contract between the parties, and that the railway company were entitled under their conveyance to a right of support. It would have been otherwise had there been no saving clause, for then the provisions of the general Act would have operated to control the relations of the parties.

And so in a case where land was acquired by a Corporation for the purpose of carrying out sewage works, and neither the Lands Clauses Acts nor the Waterworks Clauses Act applied to the transaction, it was held that the right of the Corporation to the support of the surface which it acquired, by the underlying minerals, which were excepted from the conveyance, or by the adjacent land, would depend entirely upon the doctrines and principles of the common law, and not on any substantive statutory enactment: *per Parker, J.*, in *Jary v. Barnsley Corporation* ([1907] 2 Ch. at p. 612).

More recently the House of Lords have held in a case when a Corporation acquired lands for the construction of waterworks under a special Act which gave them power to purchase by agreement but not compulsorily, though it incorporated the Waterworks Clauses Act of 1847, that they were entitled to the common law right of lateral support from the adjacent land which they had bought without minerals, and that right was not affected by the Waterworks Clauses Act. Here the purchase of the land was voluntary, for the Corporation had no power to buy compulsorily: *New Moss Colliery Ltd. v. Manchester Corporation* ([1908] A. C. 117).

Where, however, a railway company acquired land for the construction of a railway compulsorily under a special Act which incorporated the provisions of the Railway Clauses Act of 1845, Smith, L. J., observed:—"I think it is obvious and beyond all doubt that the rights of the parties are to be determined, not by the ordinary principles of real property law, but by the clauses

relating to mines in the Railway Clauses Consolidation Act of 1845. It is well known that the rights of the surface owner and the mineral owner under the sections are totally different from the rights which they would respectively enjoy if it were not for those statutory enactments." "The mineral owner is entitled," he continued, "to work his mine under the railway, and as close up to it as the minerals extend, although the consequence is to derogate from his own grant and destroy the surface by letting it down a right which no mineral owner has at common law:" *Ruabon Brick and Terra Cotta Co. v. Great Western Railway Co.* ([1893] 1 Ch. pp. 452-3).

"It was obviously the intention of the Legislature," said Lord Cranworth, "in making these provisions to create a new code as to the relation between mine owners and railway companies, where lands were compulsorily taken for the purpose of making a railway. The object of the statute evidently was to get rid of all the ordinary law on the subject and to compel the owner to sell the surface, and if any mines were so near the surface that they must be taken for the purposes of the railway, to compel him to sell them, but not to compel him to sell anything more:" *Great Western Railway Co. v. Bennett* (L. R. 2 H. L. 27).

In the same case Lord Westbury observed :—"There is no room for the ordinary implication which applies to a common grant, viz., that it extends by implication to all that, though not named, which is necessary for the support or enjoyment of the thing granted. Then what remains between the railway company and the mine-owner? It is defined by the statute."

Lord Chelmsford, L. C., also said :—"The provision contained in this section is extremely beneficial to railway companies. They are not to have any mines or minerals, that is, under the land purchased by them; but they may secure sufficient support to the railway by purchasing it from the owner of the mines, or they may postpone the purchase until the necessity for it arises."

Lord Herschell, in a later case, after citing the foregoing observations of Lord Cranworth, likewise remarked :—"The effect of this legislation was obviously very advantageous to the railway companies, and inflicted no wrong upon the owner of the minerals. The company in the first instance paid only for the surface of the land, and for such minerals as had to be taken in the making of the railway. They enjoyed the support of the underlying minerals

for an indefinite term without paying for it. The mineral owner suffered no wrong. He still retained the ownership of the minerals and the right to work them, which was all that he possessed before. The only burden imposed upon him, if it can be so called, was that when desirous of working the mines he should give the company an opportunity of purchasing them :'' *Midland Railway Co. v. Robinson* (L. R. 15 App. Cas. at p. 28).

Lord Macnaghten in the same case also observed :—" That a railway company is not entitled to support from subjacent or adjacent mines is perfectly clear from the Act, as was pointed out in *Bennett's case* :'' (*Id.* at p. 36).

Cockburn, C. J., in an earlier case observed :—" It was not a voluntary conveyance in the general sense of the term. It was a conveyance of land which the company had the power to take, and with which the landowner was under the necessity of parting. No doubt at common law when a landowner parts with the surface and reserves to himself the minerals, he subjects himself to the obligation of not so dealing with the strata below as to deprive the surface of support. But this is a simple case of land sold to the railway company, the minerals being reserved to the owner of the soil. It may be that the minerals will never be worked by the landowner. In that case the company are not put to the expense of purchasing the right to so much of the minerals below as are necessary for the support of the line ; but if ever the mine comes to be worked and the company require the minerals to remain untouched, they must pay compensation for them, if, as they have power given them, they prevent their being worked :'' *Fletcher v. Great Western Railway Co.* (29 L. J. Ex. 253).

The meaning of this appears to be that when lands are acquired under statutory powers without the minerals, the promoters cannot claim the benefit of an ordinary purchaser, to subjacent support. If they require support for the land taken they must pay compensation for it, in terms of the general statute.

It has been held by the Appeal Court that the provisions of the mines clauses in the Railway Clauses Consolidation Act, 1845 (ss. 77-85), apply only to mines within the limit prescribed in sec. 78, and for mines lying beyond those limits (forty yards) a railway company enjoys the common law right of lateral support : *London and North-Western Railway Co. v. Howley Park Coal and Canal Co.* ([1911] 2 Ch. 97).

This has been recently affirmed by the House of Lords on appeal, where the same principle was laid down by the Lord Chancellor in these terms. "The right to lateral support is a natural right of property, and to take away that natural right there must be a plain indication of intention on the part of the legislature:" *per* Lord Haldane, L. C., in *Howley Park Coal and Cannel Co. v. London and North-Western Railway Co.* ([1913] A. C. at p. 25).

But under certain circumstances subjacent support will be regarded as an easement of necessity. The Indian Easements Act (V of 1882), sec. 13, *illus. (l)* provides that under the Land Acquisition Act, where a railway company compulsorily acquires a portion of *B's* land for the purpose of making a siding, the company is entitled to such amount of lateral support from *B's* adjoining land as is essential for the safety of the siding. And see also the safeguards provided by sec. 7, and sec. 13, *post*.

"*Mines or minerals.*"—See under ss. 1, 3, *ante*.

"*Persons having an interest.*"—See under sec. 6, *post*.

Sub-sec. (3).—If the surface is endangered by the working of the underlying minerals, it is open to the Local Government, the Company, or the local authority, as the case may be, by paying compensation under cl. (a), to put a stop to the working, and so safeguard the surface.

Sub-sec. (4).—Under this provision the working of a mine may be so regulated as to secure subjacent support to the surface, provided compensation is paid to the mine-owner under cl. (b). For this purpose a mine may be inspected from time to time under the powers conferred by sec. 11, *post*.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act [1894], for ascertaining the persons interested in the land to

Mode of determining persons interested and amount of compensation.

be acquired under that Act, and the amounts of compensation payable to them, respectively.

COMMENTARY.

Cf. Act XXII of 1863, s. 51. *Cf.* also 8 & 9 Vic., c. 20, s. 78; 10 & 11 Vic., c. 17, s. 22; 46 & 47 Vic., c. 37.

This section provides that the compensation payable under sec. 5 is to be assessed in the manner prescribed by the Land Acquisition Act. The same provision occurs in the English Acts, though it is made conditional on a dispute arising as to the compensation: *Reg. v. London and North-Western Railway Co.* ([1894] 2 Q. B. 512).

"*Mines or minerals.*"—See under secs. 1, 3, *ante*.

"*The persons interested.*"—These words were substituted by the Select Committee for the term 'owner, lessee or occupier' which occur in the Railway Clauses Act (s. 78), as they were thought to be better adapted "to provide for the exigencies of a state of things" such as existed in the case of *Smith v. Great Western Railway Co.* (3 App. Cas. 165). There 'a person holding under a terminable lease had an immediate right to work the minerals, and another person was entitled to the reversion on the expiration of the lease.' The lease 'might or might not be of such a length as to admit of all the minerals being worked out during its continuance, or be terminable by forfeiture or otherwise.' "The simplest mode," it was thought, "of dealing with the various interests that may co-exist in the mines is to require, in accordance with the scheme of the Land Acquisition Act, that they should all, whether present or future, be considered and compensated for simultaneously, whenever the owner of the surface has occasion to exercise his power of stopping or controlling the working."

"We have accordingly," they said, "provided in effect that where the person immediately entitled to work the mines intimates to the owner of the surface his intention to work them, and the latter after that determines to stop or control the working, the settlement of compensation must extend to all persons interested in the mines, and the stoppage or control will be binding in perpetuity on all alike" (see *Appx. D*).

It is to be observed that it is only in dealing with questions of compensation that this distinction is maintained, for in subsequent

sections (7-13) the Legislature have reverted to the English term 'owner, lessee, or occupier,' as representing the person in possession (see ss. 7-13, *post*). See also sec. 3(b), Act I of 1894, *ante*.

In *Smith's Case* referred to above the House of Lords decided that for purposes of compensation s. 78 must be read with s. 6 which gives a general right to compensation to "owners and occupiers, and all other parties interested in lands taken or injuriously affected by the construction" of the railway. In this section an effort has been made by the Legislature to assimilate the law with these views.

"*The amounts of compensation payable.*"—The persons interested will be entitled to be paid compensation in the usual way for the value of the mine with all its 'potentialities.' The rule of compensation in such cases has been very clearly laid down by the House of Lords in *Bwllfa and Merthyr Dare Steam Collieries v. Pontypridd Waterworks Co.* ([1903] A. C. 426).

"The true enquiry here is not what is the value of the coal-field or of the coal, but what would the colliery company, if they had not been prohibited, have made out of the coal during the time it would have taken them to get it:" *per* Lord Halsbury, L. C. (*Id.* at p. 428). "The mine-owner prevented from working his minerals is to be fully compensated—the Act says so. That means that so far as money can compensate him he is to be placed in the position in which he would have been if he had been free to go on working. Here it has been proved that if he had not been interfered with he would have made between £5,000 and £6,000:" *per* Lord Macnaghten (*Id.* at p. 431).

"When the promoters of the undertaking give notice requiring the minerals to be left unworked, they do not thereby purchase or agree to purchase them. They merely agree to pay compensation for the damage caused by the minerals being left unworked." "If the inquiry takes place some time after the notice is given, all unexpected and foreseen alterations in the price of the mineral which have taken place in the interval may properly be taken into account in assessing the compensation:" Lord Halsbury's *Laws of England*, Vol. VI, p. 54.

"The compensation payable for the interruption of the continuous working of mines is the additional expenses and losses incurred, but they need not be actually incurred at the time, provided they are imminent, and capable of being immediately estimated with reasonable certainty." (*Id.*)

Where the mine was held on lease Lord Penzance observed: "The full value of the coal, deducting of course the cost of getting it, must be the measure of the compensation which would be due to the lessee." *Smith v. Great Western Railway* (L. R. 3 App. Cas. p. 185.)

More recently the House of Lords have held that the compensation payable by a railway company to a lessee in respect of such mines as they require to be left unworked is the full value of such minerals, *i.e.*, what the minerals would have sold for if worked, less the cost of working them: *Eden v. North-Eastern Railway Co.* ([1907] A. C. 400).

Where a claim was made for limestone, it was held that as the limestone had no market-value in the strict sense of the term, its value to the claimants was what they might fairly be expected to have made out of it by working it in the ordinary manner, and that the profits which the claimants would have made by turning it into cement might properly be taken into consideration in estimating the value, but the fact that the claimants owned other limestone which they could have worked instead would not affect it: *Rugby Portland Cement Co. v. London and North-Western Railway* ([1908] 2 K. B. 606).

It is clear then that the measure of compensation in such cases, where it could be estimated would be the net result of loss occasioned by the interference, and this whether the working was entirely stopped or only partially restricted. The procedure to be adopted in the inquiry is that prescribed in Act I of 1894.

7. (1) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

COMMENTARY.

Cf. Act XXII of 1863, s. 51. *Cf.* also 8 & 9 Vic., c. 20, s. 79; 10 & 11 Vic., c. 17, s. 23; 46 & 47 Vic., c. 37.

This section has been borrowed direct from the Railway Clauses Act, 1845, and permits the 'owner, lessee or occupier' to proceed to work his mine as soon as the period of sixty days prescribed in his notice has expired. But he must conduct his operations in such a manner as not to cause damage to the surface land.

Under the English Act of 1845 (s. 79), it was held that—"If the 'thirty days' have elapsed without a counter-notice, the mine-owner may begin to work, and then as to such portions as he has worked the counter-notice if it ever comes, will come too late; but as to such portions as he has not worked when the counter-notice comes, if the railway company make compensation for all the damage that is sustained in consequence of leaving them unworked, there would seem to be no reason in justice why that should not be done:" *per* Lord Blackburn in *Dixon v. Caledonian Railway Co.* (L. R. 5 A. C. 19).

Under this Act, it will be observed, it is the Local Government that takes action, while a 'declaration' has been substituted for the 'notice to treat' or 'counter-notice.' But see sec. 14, *post*.

Sub-sec. (1).—The mine can only be worked if no 'declaration' under sec. 5 has been made, and the working must stop as soon as a declaration is published.

"*Owner, lessee or occupier.*"—These words are taken from English Acts. Other equivalent expressions used in this Act are 'persons interested' (see s. 6), and 'person for the time being immediately entitled' (see s. 4).

"*The mines or any part thereof.*"—See under ss. 1, 3, *ante*.

"*Local Government.*"—See under sec. 3(c), Act I of 1894, *ante*, and sec. 14, *post*.

"*In a manner proper and necessary for the beneficial working thereof,*" *etc.*—These words are taken from sec. 79 of the Railway Clauses Act of 1845, and must be read with the next clause which imposes a further obligation. The meaning appears to be that the mine-owner may work his mine in the customary manner and to the best advantage, but not so as to damage the surface land or the works thereon. If he does so, he is liable to make it good. These are the only obligations imposed. "The mine-owner may work his mines in a manner beneficial to himself, in order to win the largest quantity of minerals that the mine will yield, but not so as to depart from the usual manner of working in the district." *per* Lord Chelmsford, L. C., in *Great Western Railway Co. v. Bennett* (L. R. 2 H. L. p. 39).

The owner is at liberty to work his mine either by underground workings or by open or surface operations, if that be the usual manner of working minerals in the locality: *Midland Railway Co. v. Robinson* (L. R. 15 App. Cas. 19).

And so where the land acquired by a railway company had below the surface of it a valuable bed of clay, which was not included in the purchase, it was held that the owner was entitled under sec. 79 to work it, after notice, even from the surface, and for that purpose to enter upon the land which had become the property of the company, provided the working was done "in a manner proper and necessary for the beneficial working of the mine, and according to the usual manner of working such mines in the district." So that "if in any particular spot the minerals come so close to the surface that it is necessary for the beneficial working of those minerals, and according to the usual manner of working them in the district, that they shall be worked from above downwards, the mine-owner has a right to do it:" *per* Lindley, L. J., in *Ruabon Brick Co. v. Great Western Railway Co.* ([1893] 1 Ch. at p. 453).

And so also in a similar case, where the bed of clay was covered by three or four feet of surface earth, except at one point where it cropped out and could be got entirely by open workings, it was held that the owner was entitled to work it, if after notice the railway company were unwilling to purchase it. For the company could

give a counter-notice, and have the value of the clay assessed, and by paying for it prevent the owner from working it: *Midland Railway Co. v. Haunchwood Brick and Tile Co.* (L. R. 2 Ch. D. p. 560). And see also *Dixon v. Caledonian Railway Co.* (L. R. 5 App. Cas. 820); and *Midland Railway Co. v. Miles* (L. R. 32 Ch. D. p. 647).

A different view was expressed by Lord Macnaghten in *Midland Railway Co. v. Robinson* (15 App. Cas. 19) as to whether a mine-owner was entitled to enter upon the land which had passed to the railway company for the purpose of working his mine from the surface, as was laid down in *Ruabon Brick Co. v. Great Western Railway* cited above. He there said, "I do not think that it necessarily follows that a mine-owner who is entitled to withdraw support by working his mines in the ordinary course, if the company do not compensate him, is entitled to enter upon the surface, which unquestionably belongs to the railway company, and break it up by working from the surface" (at p. 36).

A Railway Company acquired, under statutory powers, a piece of land for the construction of railways, without the subjacent minerals, which consequently remained the property of the vendor. The vendor was also the owner of other land adjoining the railway with underlying minerals, and it was held that he was entitled, under sec. 80, to make passages under the railway from his own land in order to work the minerals underlying the property acquired by the railway, although he had no right of way over it; and, further, that he was entitled to claim compensation under sec. 81 for the extra expenses incurred: *Midland Railway Co. v. Miles* (L. R. 33 Ch. D. 632).

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain
- Mining communications.

and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Governor-General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

COMMENTARY.

C/. 8 & 9 Vic., c. 20, s. 80; 10 & 11 Vic., c. 17, s. 24; 46 & 47 Vic., c. 37.

This section is a reproduction of sec. 80 of the Railway Clauses Act of 1845 with modifications.

"*Owners, lessees and occupiers.*"—This expression is adopted from the English Act, and is employed in ss. 7-13: see under sec. 6.

"*Mines.*"—See under ss. 1, 3, *ante*.

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of

Local Government to
pay compensation for
injury done to mines.

questions touching the amount of compensation payable under the Land Acquisition Act, [1894].

COMMENTARY.

Cf. 8 & 9 Vic., c. 20. s. 81; 10 & 11 Vic., c. 17, s. 25; 46 & 47 Vic., c. 37.

This section is practically the same as sec. 81 of the Railway Clauses Act of 1845.

"*Local Government.*"—See under sec. 3(c), Act 1 of 1894, *ante* 1 and sec. 14, *post*.

"*Owner, lessee or occupier.*"—See under sec. 6, *ante*.

"*Mines, Minerals.*"—See under ss. 1, 3, *ante*.

"*Additional expenses and losses.*"—An owner of mines or minerals under land adjoining a railway is entitled to compensation for extra expenses incurred in making passages (s. 80) from his own land to get at the minerals underlying the railway: *Midland Railway Co. v. Miles* (L. R. 33 Ch. D. 632).

Where by reason of the stoppage of his mining operations by a railway company a mine-owner was compelled to sink a new pit in another spot, it was held that this was an additional expense occasioned by the severance of the lands for which he was entitled to compensation under sec. 81; and further that compensation could be claimed at once as the outlay could be estimated beforehand. "Where the expense, though not actually incurred, is capable of immediate ascertainment, it can be recovered at once:" *per Kelly, C. B., Whitehouse v. Wolverhampton Railway Co.* (L. R. 5 Ex. 6).

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or

And also for injury arising from any airway or other work.

occupier of the surface lands for the loss or damage so sustained by him.

COMMENTARY.

Cf. 8 & 9 Vic., c. 20, s. 82.

This section has been reproduced almost verbatim from the Railway Clauses Act of 1845, (sec. 82).

"*Owner or occupier.*"—See under ss. 6, 7, *ante*.

"*Local Government.*"—See under sec. 3(c), Act I of 1894, *ante* and sec. 14, *post*.

"*Mines.*"—See under ss. 1, 3, *ante*.

"*Lands.*"—This means here surface land.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

Power to officer of Local Government to enter and inspect the working of mines.

COMMENTARY.

Cf. 8 & 9 Vic., c. 20, s. 83; 10 & 11 Vic., c. 17, s. 26; 46 & 47 Vic., c. 37.

This section is a simple reproduction of sec. 83 of the Railway Clauses Act of 1845, with the necessary variations.

"*Mines.*"—See under ss. 1, 3, *ante*.

"*Land.*"—This means surface land. But see also Act I of 1894, sec. 3(a), *ante*.

"*Local Government.*"—See under sec. 3(c), Act I of 1894 and sec. 14, *post*.

"*Owner, lessee, or occupier.*"—See under ss. 6, 7, *ante*.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

Penalty for refusal
to allow inspection.

COMMENTARY.

Cf. 8 & 9 Vic., c. 20, s. 84.

This section is the same as sec. 84 of the Railway Clauses Act of 1845.

"*Owner, lessee, or occupier.*"—See under ss. 6, 7, *ante*.

"*Local Government.*"—See under sec. 3(c), Act I of 1894; and sec. 14, *post*.

"*Mines.*"—See under ss. 1, 3, *ante*.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

If mines worked
contrary to provisions
of this Act, Local
Government may re-
quire means to be
adopted for safety of
land acquired.

COMMENTARY.

Cf. 8 & 9 Vic., c. 20., s. 85.

This section is the same as sec. 85 of the Railway Clauses Act of 1845, with the necessary modifications.

"*Mines.*"—See under ss. 1, 3, *ante*.

"*Local Government.*"—See under sec. 3(c), Act I of 1894, *ante*; and sec. 14, *post*.

"Owner, lessee, or occupier."—See under ss. 6, 7, *ante*.

"Land."—Here this means surface land. But see also sec. 3(a), Act I of 1894, *ante*.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the local authority or Company, as the case may be, which has acquired the land" were substituted.

Construction of Act when land acquired has been transferred to a local authority or Company.

COMMENTARY.

This section merely provides that, when land has been acquired for a 'local authority' or a Company' (s. 16), the action prescribed by secs. 4-13 for the Local Government is to be taken by them, as under the English Act. It is to be observed, however, that this only refers to companies formed for the execution of a public purpose, and subject to the conditions imposed in Part VII (ss. 38-44) of the Land Acquisition Act (I of 1894). See *Appx. D, post*.

"Land."—See sec. 3(a), Act I of 1894, *ante*.

"Local authority or Company."—See sec. 16, *post*.

15. (1) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870, are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14 or a reference to the Court under section 15 of that Act, or has taken possession of the land under section 17 of the same.

Pending cases.

(2) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870, to act for persons so

interested, who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870, consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

COMMENTARY.

This section is practically obsolete, for it applies only to pending cases. It is not likely that any cases which were pending on the 16th October, 1885, when this Act was passed, are pending still.

The object of sub-sec. (2), which was introduced by the Select Committee, is explained in their Report on the Bill (see *Appx. D*).

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

COMMENTARY.

Cf. Act X of 1897, sec. 3(28); Act I of 1894, sec. 3(e).

See under sec. 1(2), Act of I of 1894, *ante*, for a list of the local authorities who have had powers given them under the Land Acquisition Acts.

"Enactments relating to companies &c. in British India".—
The new Indian Companies (Consolidation) Act, of 1813, comes into force on 1st Jan., 1914.

17. This Act shall, for the purposes of all enactments for the time being in force,
This Act to be read
with Land Acquisition
Act [1894]. be read with and taken as part of
the Land Acquisition Act [1894].

COMMENTARY.

Cf. Act I of 1894, sec. 2(3).

PART II.

APPENDIX A.

THE LAND ACQUISITION ACT, 1894.

(ACT I OF 1894),

AS MODIFIED BY THE CALCUTTA IMPROVEMENT ACT, 1911,
AND THE CITY OF BOMBAY IMPROVEMENT ACT, 1898.

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent
and commencement.

1. (1) This Act may be called the Land Acquisition Act, 1894.

- (2) It extends to the whole of British India ; and
- (3) It shall come into force on the first day of March, 1894.

2. (1) The Land Acquisition Act, 1870, and section 74 of the Punjab Courts Act, 1884, are hereby
Repeal. repealed.

(2) But all proceedings commenced, officers appointed or authorized, agreements published and rules made under the

said Land Acquisition Act shall, as far as may be, be deemed to have been respectively commenced, appointed or authorized, published and made under this Act.

(3) Any enactment or document referring to the said Land Acquisition Act or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,—

(a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

[“and shall be deemed to include rights created by legislative enactment over any street.”—By Bom. Act IV of 1898, s. 47(1), *post*].

(b) the expression “person interested” includes all persons [“including the Crown”] claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

[“or if he is the owner of any right created by legislative enactment over any street forming part of the land.”—By Bom. Act IV of 1898, s. 47 (1)],

(c) the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act;

(d) the expression “Court” means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act; (omitted by Bom. Act IV of 1898)

[“the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act.”—By Ben. Act V of 1911, s. 71]; (and see Bom. Act IV of 1898, s. 48, *post*);

(e) the expression “Company” means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent: (omitted by Bom. Act IV of 1898)

[(e)] the expression "local authority" includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911".—By Ben. Act V of 1911, Sch. s. 1];

(f) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared, by notification in the official Gazette, that it is customary for the Government to make such provision; (omitted by Bom. Act IV of 1898) and

(g) the following persons shall be deemed persons "entitled to act," as and to the extent hereinafter provided (that is to say),—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability :

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age ; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court ["*Tribunal*"] to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;

(ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court ["*Tribunal*"], as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;

(iii) the provisions of Chapter XXXI (Order xxxii) of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court ["*Tribunal*"] by a next friend, or by a guardian for the case, in proceedings under this Act ; and

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.

ACQUISITION.

Preliminary Investigation.

4. (1) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (omitted by Bom. Act IV of 1898).

Publication of preliminary notification, and powers of officers thereupon.

(2) Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the subsoil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

Payment for damage.

Declaration of intended Acquisition.

6. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

(In lieu of this a declaration under s. 29, 32, 32D, or 39 is substituted by Bom. Act IV of 1898).

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to

appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land, and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866. (See Act VI of 1898).

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Inquiry into Measurements, Value and Claims, and Award by the Collector.

11. On the day so fixed, or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated, pursuant to a notice given under section 9, to the measurements made under section 8, and into the value of the

Power to require and enforce the making of statements as to names and interests.

Inquiry and award by Collector.

land, and into the respective interests of the persons claiming the compensation, and shall make an award, under his hand, of—

- (i) the true area of the land ;
- (ii) the compensation which in his opinion should be allowed for the land : and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him ; [*“ and*
- (iv) *the costs which, in his opinion, should be allowed, to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in section 23, sub-section (2),*

as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.”—By Ben. Act V of 1911, Sch. s. 2].

12. (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the inquiry to a day to be fixed by him.

14. For the purpose of inquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23, 24 [*“and 24A.”*—By Ben. Act V of 1911, Sch. s. 3].
- Matters to be considered and neglected.

Taking possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.
- Power to take possession.
- (See also Bom. Act IV of 1898, s. 50, *post*).

17. (1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.
- Special powers in cases of urgency.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghât station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1), and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government, free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience. (Sub-sec. 2 is omitted by Bom. Act IV of 1898).

(3) In every case under either of the preceding sub-sections, the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and

not excepted in section 24 ["or section 24A"]; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

[(4) "Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession"—By Ben. Act V of 1911, Sch. s. 4].

["17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition"—By Ben. Act V of 1911; Sch. s. 5].

Transfer of land
to Board.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court ["Tribunal"], whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested ["or the amount of the costs allowed"—By Ben. Act V of 1911, Sch. s. 6].

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2) ; or within six months from the date of the Collector's award, whichever period shall first expire.

19. (1) In making the reference, the Collector shall state, for the information of the Court ["*Tribunal*"]
Collector's state- in writing under his hand,—
ment to the Court.

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation ["*and of costs (if any)*"] awarded under section 11 (By Ben. Act V of 1911, Sch. s. 7) ; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively.

20. The Court ["*Tribunal*"], shall thereupon cause a notice, specifying the day on which the
Service of notice. Court ["*Tribunal*"] will proceed to determine the objection, and directing their appearance before the Court ["*Tribunal*"] on that day, to be served on the following persons, namely :—

(a) the applicant ;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation ["*or costs*"], the Collector. (By Ben. Act V of 1911, Sch. s. 8).

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of
Restriction on the interests of the persons affected by the
scope of proceedings. objection.

22. Every such proceeding shall take place in open Court ; and all persons entitled to practise in any
Proceedings to be in Civil Court in the Province shall be en-
open Court. titled to appear, plead and act (as the case may be) in such proceeding.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court ["*Tribunal*"] shall take into consideration—

Matters to be considered in determining compensation.

first, the market-value of the land at the date of the publication of the declaration relating thereto under section 6 ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings ;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

sixthly, the damage (if any) *bonâ fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land, as above provided, the Court ["*Tribunal*"] shall in every case [*"except where the land acquired is situated in the Calcutta Municipality and within the area comprised in an improvement scheme sanctioned under the Calcutta Improvement Act, 1911"*] award a sum of fifteen *per centum* on such market-value, in consideration of the compulsory nature of the acquisition (Sub-sec. 2 is omitted by Bom. Act IV of 1898).

[(3) "*For the purposes of clause 'first' of sub-section (1) of this section,—*

(a) *the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6 ;*

(b) *if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred*

expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him;

[" (bb) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(bbb) if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded."—By Ben. Act III of 1915];

(c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was made bonâ fide and not in contemplation of proceedings for the acquisition of the land being taken under this Act;

(d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and

(e) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding "—By Ben. Act V of 1911, Sch. s. 9].

Matters to be neglected in determining compensation.

24. But the Court ["Tribunal"] shall not take into consideration—

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

(Cls. 6 and 7 are omitted by Bom. Act IV of 1898).

[" *seventhly*, any outlay on additions or improvements to the land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair"—By Ben. Act V of 1911, Sch. s. 10].

[24A. " In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely,—

(1) *when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;*

(2) *if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;*

(3) *if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building*”—By Ben. Act V of 1911, Sch. s. 11].

(See " *further provisions* " by Bom. Act IV of 1898, s. 49).

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court [" *Tribunal* "] shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

Rules as to
amount of com-
pensation.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason, to be allowed by the

Judge ["*President of the Tribunal*"] to make such claim, the amount awarded by the Court ["*Tribunal*"], shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason, to be allowed by the Judge ["*President of the Tribunal*"], to make such claim, the amount awarded to him by the Court ["*Tribunal*"] shall not be less than, and may exceed, the amount awarded by the Collector.

26. Every award under this Part shall be in writing signed by the Judge ["*President of the Tribunal*"], and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court ["*Tribunal*"] shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court ["*Tribunal*"], the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court ["*Tribunal*"] may direct that the Collector shall pay interest on such excess at the rate of six *per centum* per annum from the date on which he took possession of the land to the date of payment of such excess into Court ["*to the Tribunal*"].

Collector may be directed to pay interest on excess compensation.

PART, IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court ["*Tribunal*"].

PART V.

PAYMENT.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation ["*and costs (if any)*"] awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation ["*and costs (if any)*"] in the Court ["*with the Tribunal*"] to which a reference under section 18 would be submitted:—(By Ben. Act V of 1911, Sch. s. 12).

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation ["*or costs*"] awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Local Government, instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable, having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. (1) If any money shall be deposited in Court [*"with the Tribunal"*] under sub-section (2) of the last preceding section, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court [*"Tribunal"*] shall—

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court [*"Tribunal"*] shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land ; and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid ; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court [*"Tribunal"*] shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collectors, namely:—

(a) the costs of such investments as aforesaid ;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court [*"by the Tribunal"*] of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. When any money shall have been deposited in Court [*"with the Tribunal"*] under this Act for any cause other than that mentioned in the last preceding section, the Court [*"Tribunal"*] may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested

Investment of money deposited in other cases.

therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited, or as near thereto as may be.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded, with interest thereon at the rate of six *per centum* per annum, from the time of so taking possession until it shall have been so paid or deposited.

PART VI.

TEMPORARY OCCUPATION OF LAND.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court ["*Tribunal*"].

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court ["*Tribunal*"].

Difference as to
condition of land.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

38. (1) Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

Company may be
authorized to enter
and survey.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

(ss. 38-44 are omitted by Bom. Act IV of 1898).

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

Previous consent
of Local Govern-
ment and execution
of agreement neces-
sary.

40. (1) Such consent shall not be given unless the Local Government, be satisfied, by an inquiry held as hereinafter provided,—

Previous inquiry.

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

(2) Such inquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

41. Such officer shall report to the Local Government the result of the inquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely:—

Agreement with
Secretary of State
in Council.

- (1) the payment to Government of the cost of the acquisition ;
- (2) the transfer, on such payment, of the land to the Company ;
- (3) the terms on which the land shall be held by the Company ;
- (4) the time within which, and the conditions on which, the work shall be executed and maintained ; and
- (5) the terms on which the public shall be entitled to use the work.

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette of India, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Publication of
agreement.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land.

Sections 39 to 42
not to apply where
Government bound
by agreement to
provide land for
Companies.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

How agreement between Railway Company and Secretary of State may be proved.

PART VIII.

MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge [*"President of the Tribunal"*].

Service of notices.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer-door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge [*"President of the Tribunal"*] shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866 (1898), and service of it may be proved by the production of the addressee's receipt.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceed-

Penalty for obstructing acquisition of land.

ing one month, or to fine not exceeding fifty rupees, or to both.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

[" 48A. (1) *If, within a period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.*

Compensation to be awarded when land not acquired within two years.

(2) *The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.*

48B. *No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911.*"—By Ben. Act V of 1911, Sch. s. 13].

Sections 48 and 48A not to apply in certain cases.

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Acquisition of
part of house or
building.

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court [" *Tribunal* "], and shall not take possession of such land until after the question has been determined.

In deciding on such a reference, the Court [" *Tribunal* "] shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

[" (1a) *For the purposes of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house* "—By Ben. Act V of 1911, Sch. s. 14].

(2) If, in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary ; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

Acquisition of
land at cost of a
local authority or
Company.

(2) In any proceeding held before a Collector or Court ["Tribunal"] in such cases, the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

53. Save in so far as they may be consistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court ["Tribunal"] under this Act.

Code of Civil Procedure to apply to proceedings before Court.

54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the Court in any proceedings under this Act. (Omitted by Bom. Act IV of 1898).

Appeals in proceedings before Court.

[" 3. (1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the (High) Court in any of the following cases, namely :—

Appeal from awards of the Tribunal.

- (a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 of the said Act :
- (b) where the decision is that of the Tribunal, and
 - (i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or
 - (ii) the (High) Court grants special leave to appeal :

Provided that the (High) Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

(2) *An appeal under clause (b) of sub-section (I) shall only lie on the following grounds, namely :—*

- (i) *the decision being contrary to law or to some usage having the force of law ;*
- (ii) *the decision having failed to determine some material issue of law or usage having the force of law ;*
- (iii) *a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.*

4. *Subject to the provisions of section 3, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act.*

5. *The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the (High) Court on appeal as if it was a decree made by himself.*

6. *An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of No. 156 of the First Schedule to the Indian Limitation Act, 1908.”—By Act XVIII of 1911].*

[1. *“ The City of Bombay Improvement Act, 1898, shall so far as regards the appellate jurisdiction conferred upon the High Court by section 48, sub-section (II), thereof, be as valid as if it had been passed by the Governor-General of India in Council at a meeting for the purpose of making Laws and Regulations.*

2. *Subject to the provisions of sections 48, sub-section (II), of the said Act, the provisions of the Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under that sub-section, and orders passed therein by the High Court may, on application to the Chief Judge of the Small Cause Court, be executed by him as if they were decrees made by himself.*

3. *An appeal to the High Court under section 48, sub-section (II), of the said Act, shall, for the purposes of No. 156 of the Second Schedule to the Indian Limitation Act, 1877, be deemed to be an appeal under the Code of Civil Procedure in a case not provided for by No. 151 and No. 153 of that Schedule.*—By Act XIV of 1904]

[“*In any case in which the President may grant a certificate that the case is a fit one for appeal, there shall be an appeal to the High Court from the award or any part of the award of the Tribunal.*”—By Bom. Act IV of 1898, s. 48(11).]

55. (1) The Local Government shall have power to make rules, consistent with this Act, for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under subsection (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall, when sanctioned by the Governor in Council, be published in the official Gazette, and shall thereupon have the force of law.

APPENDIX B.

COGNATE MEASURES

CALCUTTA IMPROVEMENT ACT.

BENGAL ACT V OF 1911.

AMENDED BY BEN. ACT III OF 1915.

WHEREAS it is expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes, and otherwise as hereinafter appearing ;

And whereas it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act ;

And whereas the sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), to the provisions of this Act which affect Acts passed by the Governor-General of India in Council ;

And whereas the sanction of the Governor-General has also been obtained, under section 43 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), to the enactment of the provisions of Chapter V of this Act, relating to taxation ;

It is hereby enacted as follows :—

CHAPTER I.—PRELIMINARY.

Short title, commencement and extent. 1. (1) This Act may be called the Calcutta Improvement Act, 1911.

(2) It shall come into force on such day as the Local Government may, by notification, direct.

(3) Except as otherwise hereinafter provided, this Act shall extend only to the Calcutta Municipality; but any provision which extends only to the Calcutta Municipality may be extended by the Local Government, entirely or in part, by notification, under the procedure prescribed by section 148, to any specified area in the neighbourhood of that Municipality.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "the Board" means the Board of Trustees for the Improvement of Calcutta, constituted under this Act;

["(aa) 'building line' means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend"—By Ben. Act III of 1915];

(b) "the Calcutta Municipality" means "Calcutta" as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899;

(c) "Chairman" means the Chairman of the Board;

(d) "the Corporation" means the Corporation of Calcutta constituted under the said Calcutta Municipal Act, 1899;

(e) "the General Committee" means the General Committee constituted under the said Calcutta Municipal Act, 1899;

(f) "improvement scheme" means a general improvement scheme or a street scheme, or both; ["but does not include a projected public street referred to in section 63"—By Ben. Act III of 1915];

(g) "land" has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894;

(h) "municipal assessment-book" means the assessment-book kept under section 164 of the Calcutta Municipal Act, 1899, or the valuation and rating list prepared under section 103 of the Bengal Municipal Act, 1884;

(i) "notification" means a notification published in the Calcutta Gazette;

(k) "Secretary to the Board" means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board;

(l) the "Tribunal" means the Tribunal constituted under section 72;

(m) "Trustee" means a Member of the Board; and

(n) the expressions "drain," "public street" and "street alignment" have the same meaning as in clauses (16), (37) and (47), respectively, of section 3 of the Calcutta Municipal Act, 1899.

CHAPTER IV.

ACQUISITION AND DISPOSAL OF LAND.

Acquisition by Agreement.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorized to acquire, or any interest in such land.

Power to purchase or lease by agreement.

Compulsory Acquisition.

69. The Board may, with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Power to acquire land under the Land Acquisition Act, 1894.

70. A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Tribunal to be constituted.

71. For the purpose of acquiring land under the said Act for the Board,—

Modification of the Land Acquisition Act, 1894.

(a) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;

(b) the said Act shall be subject to the further modifications indicated in the Schedule ;

(c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.

Constitution of Tribunal.

72. (1) The said Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

(a) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in

such Service, who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge ; or

(b) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Local Government, and the other assessor shall be appointed by the Corporation, or, in default of the Corporation, by the Local Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term.

(5) The Local Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the Local Government or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the Local Government, shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Local Government may prescribe.

Officers and servants of Tribunal. 74. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

(a) the number and grades of the clerks and other officers and servants whom he considers should be maintained for carrying on the business of the Tribunal,

(b) the amount of the salary to be paid to each such officer and servant, and

(c) the contribution payable under section 146 in respect of each such officer and servant.

(2) The President of the Tribunal shall, from time to time, make rules—

(i) for regulating the grant of leave of absence, leave allowances and acting-allowances to the officers and servants of the Tribunal ; and

(ii) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any servant of the Government in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and, with the sanction of the Board, for supplementing such contributions out of the funds of the Board :

Provided that a Government servant employed as an officer or servant of the Tribunal shall not be entitled to leave or leave-allowances otherwise than as may be prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(3) All statements prepared under sub-section (1), and all rules made under sub-section (2), shall be subject to the previous sanction of the Local Government.

(4) Subject to any directions contained in any statement prepared under sub-section (1) and any rules made under sub-section (2), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

75. (1) The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave-allowances and acting-allowances prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution.

**Payments by
Board on account
of Tribunal.**

76. (1) The President of the Tribunal may, from time to time, with the previous sanction of the Local Government, make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

**Power to make
rules for Tribunal.**

(2) All such rules shall be published by notification.

Award of Tribunal how to be determined.

77. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary ; and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and

(c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

Abandonment of Acquisition.

Abandonment of acquisition in consideration of special payment. 78. (1) In any case in which the Local Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(2) The Board shall admit every such application if it—

(a) reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board decide to admit any such application, they shall forthwith inform the Collector ; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Board shall

proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of four *per cent. per annum*, and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned:

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest, at the rate of four *per cent. per annum*, up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

79. When an agreement has been executed by any person in pursuance of section 78, sub-section (4), in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Board (together with interest, up to the date of realization, at the rate of four *per cent. per annum*), from the said person or his successor in interest in such land, in the manner provided by the Calcutta Municipal Act, 1899, for the recovery of the consolidated rate ;

Recovery of money payable in pursuance of section 78.

and, if not so recovered, the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

80. If any land in respect of which an agreement has been executed, or a payment has been accepted, in pursuance of section 78, sub-section (4), be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

Agreement or payment under section 78 not to bar acquisition under a fresh declaration.

Disposal of Land.

81. (1) The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them under this Act.

Power to dispose of land.

(2) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(a) shall give notice by advertisement in local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right can be given without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under clause (b) to take on lease or to purchase any land, the right shall be exerciseable by the person who agrees

to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

* * * *

THE SCHEDULE.

[Referred to in section 71].

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT, 1894.

Amendment of section 3. 1. After clause (c) of section 3 the following shall be deemed to be inserted, namely—

“(c1) the expression ‘local authority’ includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911.”

Amendment of section 11. 2. To section 11 the following shall be deemed to be added, namely:—
“and

“(iv) the costs which, in his opinion, should be allowed, to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen *per centum* mentioned in section 23, sub-section (2),

as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

“The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.”

Amendment of section 15. 3. In section 15, for the word and figures “and 24” the figures, word and letter “24 and 24A” shall be deemed to be substituted.

Amendment of section 17. 4. (1) In section 17, sub-section (3), after the figures “24” the words, figures and letter “or section 24A” shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely:—

“(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a *salaried* Presidency Magistrate or a Magistrate of the first class to be unhealthy.

" (5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

" (6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

5. After section 17 the following shall be deemed to be inserted, namely:—

" 17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

6. At the end of section 18, sub-section (1) the words " or the amount of the costs allowed " shall be deemed to be inserted.

7. After the words " amount of compensation," in clause (c) of section 19, the words " and of costs (if any) " shall be deemed to be inserted.

8. After the words " amount of the compensation," in clause (c) of section 20, the words " or costs " shall be deemed to be inserted.

9. (1) In sub-section (2) of section 23, after the words " in every case " the following shall be deemed to be inserted, namely:—

" except where the land acquired is situated in the Calcutta Municipality and within the area comprised in an improvement scheme sanctioned under the Calcutta Improvement Act, 1911."

(2) At the end of section 23 the following shall be deemed to be added, namely:—

" (3) For the purposes of clause *first* of sub-section (1) of this section,—

(a) the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6;

(b) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him ;

[" (bb) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(bbb) if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded."—By Ben. Act III of 1915] ;

(c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was made *bonâ fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

(d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and

(e) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding."

Amendment of
section 24.

10. For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

" *seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

New section 24A. 11. After section 24 the following shall be deemed to be inserted, namely :—

" 24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely,—

Further provisions for determining compensation.

(1) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state ;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building."

Amendment of section 31. 12. (1) After the words "the compensation" in sub-section (1) of section 31, and after the words "the amount of the compensation" in sub-section (2) of that section, the words "and costs (if any)" shall be deemed to be inserted.

(2) After the words "any compensation," in the concluding proviso to sub-section (2) of section 31, the words "or costs" shall be deemed to be inserted.

New sections 48A and 48B. 13. After section 48 the following shall be deemed to be inserted, namely :—

" 48A. (1) If, within a period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

Compensation to be awarded when land not acquired within two years.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

" 48B. No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911."

Sections 48 and 48A not to apply in certain cases.

Amendment of section 49.

14. After sub-section (1) of section 49, the following shall be deemed to be inserted, namely :—

" (1a) For the purposes of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

CALCUTTA IMPROVEMENT (APPEALS) ACT, 1911.

ACT XVIII OF 1911.

WHEREAS it is expedient to modify the provisions of the Calcutta Improvement Act, 1911, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act; It is hereby enacted as follows :—

1. This Act may be called the Calcutta Improvement (Appeals) Act, 1911.

Short title.

Definitions.

2. In this Act—

(1) " Court " means the High Court of Judicature at Fort William in Bengal: and

(2) " Tribunal " has the same meaning as in the Calcutta Improvement Act, 1911.

3. (1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely :—

Appeal from awards of the Tribunal.

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 of the said Act:

(b) where the decision is that of the Tribunal, and

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the Court grants special leave to appeal:

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate

under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under clause (b) of sub-section (1) shall only lie on the following grounds, namely :—

- (i) the decision being contrary to law or to some usage having the force of law ;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law ;
- (iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

4. Subject to the provisions of section 3, the provision of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act.

Procedure in such appeals.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal as if it was a decree made by himself.

Execution of orders of Court.

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of No. 156 of the First Schedule to the Indian Limitation Act, 1908.

Period of limitation for such appeals.

CITY OF BOMBAY IMPROVEMENT ACT, 1898.

BOMBAY ACT IV OF 1898.

AMENDED BY ACT XIV OF 1904, AND BOMBAY ACTS IV OF 1901, II OF 1908 AND I OF 1913.

WHEREAS it is expedient to make provision for the improvement and for the future expansion of the City of Bombay, by forming new and altering existing streets, by removing or altering insanitary buildings in certain areas, by providing open spaces for better ventilation and for recreation, by constructing new sanitary dwellings for certain classes of the inhabitants of the said City and for the Presidency Police, by laying out vacant lands and by reclaiming and laying out parts

of the foreshore of the Island of Bombay ; and whereas it is expedient that a Board of Trustees should be appointed and endowed with special powers to carry out the aforesaid purposes in the manner and subject to the restrictions and conditions hereinafter specified, and whereas it is proposed that certain lands and reclamation rights shall be vested in the Board in the manner hereinafter appearing, and whereas the plans of such last mentioned lands have been deposited with the Collector of Bombay and are hereinafter referred to as the deposited plans ; It is enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement. 1. (1) This Act may be called the " City of Bombay Improvement Act, 1898 ;"

(a) It extends only to the City of Bombay ;

(b) It shall come into force immediately on the passing thereof.

Saving the provisions of the Indian Telegraph Act and the Indian Railways Act. (2) Nothing in this Act shall be deemed to affect the provisions of the Indian Telegraph Act, 1885, or the Indian Railways Act, 1890.

Definition of terms. 2. In this Act, unless there be something repugnant in the subject or context, words shall be deemed to have the meaning ascribed to such words under the City of Bombay Municipal Act, 1888, as from time to time amended, hereinafter referred to as " the Municipal Act ":

" Street." Provided that the definition of the word " street " shall be read as if the words following the words " thoroughfare or not " were omitted :

" Public securities." Provided also that the term " public securities " shall include securities issued under this Act :

" Land." Provided also that in the construction of the provisions of Chapter III of this Act and of sections 60, 61 and 62, the word " land " shall, unless there be something repugnant in the subject or context, be deemed to have the meaning ascribed to it in sub-section (1) of section 47 of this Act.

* * * *

CHAPTER III.

DUTIES AND POWERS.

Improvement Schemes.

26. In making an improvement scheme for any area, regard shall be had to the conditions and nature of neighbouring parts of the City and of the City as a whole, and to the likelihood of improvement or street schemes being required for the neighbouring and other parts of the City.

Considerations which shall prevail in making the scheme.

27. (1) Upon the completion of an improvement scheme the Board shall draw up a notification stating the fact of a scheme having been made, the limits of the area comprised therein and naming a place where particulars of the scheme, a map of the area comprised therein and a statement specifying the land proposed to be acquired, may be seen at all reasonable hours ; and shall—

Procedure on completion of the scheme.

(a) communicate a copy of such notification to the President of the Corporation, who shall, within three months from the date of receipt thereof, forward to the Board, for transmission to Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme ;

Copy of notification of the scheme to be communicated to the President of the Corporation.

(b) during three consecutive weeks publish simultaneously in the *Bombay Government Gazette* and in some one or more and the same English and some two or more and the same vernacular newspapers circulating within the City, a copy of the said notification.

Publication of notification.

(2) During the thirty days next following the first day on which such notification is published, the Board shall serve a notice on every person whose name appears in the Commissioner's Assessment-book as primarily liable for the payment of the property taxes leviable under the Municipal Act on any land or building proposed to be acquired by the Board in executing the scheme, stating that such land or building is proposed to be acquired by

Service of notices on owners of property to be acquired in executing the scheme.

the Board for the purpose of an improvement scheme, and requiring an answer stating whether the person so served dissents or not in respect of the acquisition of such land or building, and if the person dissents the reasons of such dissent, within thirty days from the date of service of the notice.

(3) Such notice shall be signed by, or by the order of, the Chairman and shall be served—

(a) by delivery of the same personally to the person required to be served, or if such person is absent or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the land or building ; or,

(b) by leaving the same at the usual or last known place of abode or business of such person as aforesaid ; or,

(c) by post addressed to the usual or last known place of abode or business of such person.

“ 27A. If any land is included in any statement specifying the land proposed to be acquired made in accordance with any notification drawn up under section 27, and if the owner of such land shall prove to the satisfaction of the Collector that at the date of the said notification building operations were in progress on such land or on any part thereof and the building was structurally complete up to the first floor level, the Collector shall proceed forthwith with the acquisition of such land or such part thereof, as the case may be, with a view to its transference to the Board as if a declaration had been made under section 6 of the Land Acquisition Act, 1894. (By Bom. Act I of 1913.)

27B. (1) The owner of any land included in any statement of the land proposed to be acquired made in accordance with any notification drawn up under section 27 may at any time before the publication of a declaration under section 29 and after the expiry of one year from the date of such notification by written notice setting out the particulars of such land call upon the Board to acquire such land.

(2) On receipt of such notice the Board shall either decide to acquire the land set out in the notice or shall give written notice to the owner that they have withdrawn from the proposal to acquire as the case may be.

(3) If the Board decide to acquire the land they shall give notice of such decision to the Collector and to the owner, and the Collector shall proceed as if a declaration had been made in respect of the land in question under section 6 of the Land Acquisition Act, 1894.

(4) If the Board withdraw from the proposal to acquire any land under sub-section (2) such land shall not be included in any statement of land proposed to be acquired made in accordance with any notification drawn up under section 27 until the expiry of two years from the date of the issue of written notice to the owner." (By Bom. Act I of 1913.)

28. (1) Upon compliance with the foregoing provisions with respect to the publication and service of notices of the scheme the Board shall after consideration of any representation or answer received under section 27 and after inserting in this scheme such modifications as they may think fit, apply to Government for sanction to the scheme.

The Board after publication and service of notices to forward the scheme to Government for sanction.

Particulars to accompany the application for sanction.

(2) The application for sanction shall, save in the case provided for in sub-section (3), be accompanied by—

(a) a description with full particulars of the scheme including the reasons for any modifications inserted therein ;

(b) complete plans and estimates of the cost of executing the scheme ;

(c) a statement specifying the land proposed to be acquired ;

(d) any representation received under sub-section (1) of section 27 ;

(e) a list of the names of the persons, if any, who in answer to the notices mentioned in sub-section (2) of section 27 dissented, with the reasons (if any) stated by such persons for dissent, in respect of the acquisition of their land ;

(f) a schedule showing the rateable value, as entered in the Commissioner's Assessment-book, at the date of the publication of a notification relating to the land under section 27, of all land specified in the statement under clause (c) and of any other land wholly or partially situated within 80 feet from either side of any street to be formed or altered in executing the scheme.

(3) When under any improvement scheme provision is made for the construction of dwellings for the poorer and working classes, the Board may, after complying with the provisions of section 27, forthwith submit to Government for sanction plans and estimates for the construction of such dwellings, and on receipt of such sanction the provisions of section 29 shall, with all necessary modifications, be applicable to the part of the scheme providing for the construction of such dwellings, as if such part were the scheme.

Procedure when the scheme provides for the construction of dwellings for the poorer and working classes.

29. (1) (a) On receipt of the sanction of Government, the Chairman shall forward a declaration for notification under the signature of a Secretary to Government, stating the fact of such sanction and that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose. (b) The declaration shall be published in the *Bombay Government Gazette* and shall state the limits within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area, and the place where a plan of the land may be inspected.

(c) The said declaration shall be conclusive evidence that the land is needed for a public purpose, and the Board shall, upon the publication of the said declaration, proceed to execute the scheme.

(2) (a) If at any time it appears to the Board that an improvement can be made in any part of the scheme, the Board may alter the scheme for the purpose of making such improvement, and shall, subject to the provisions contained in the next two clauses of this sub-section, forthwith proceed to execute the scheme as altered.

The Board to have power to alter any part of the scheme.

(b) If the estimated net cost of executing the scheme as altered exceeds by a greater sum than Rs. 5,000 the estimated net cost of executing the scheme as sanctioned, the Board shall not, without the previous sanction of Government, proceed to execute the scheme as altered.

(c) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the schedule accompanying the scheme under section 28(2) (f), the provisions of sections 27 and 28 and of sub-section (1) shall apply to the part of the scheme so altered, in the same manner as if such altered part were the scheme.

Street Schemes.

30. Whenever the Board is of opinion that for the purpose of providing building sites for the expansion of the City, or of remedying the defective ventilation of any part of the City, or of creating new or increasing the existing means of communication and facilities for traffic between various parts of the City, it is expedient to form new or to alter existing streets in any part of the City, the Board may pass a resolution to that effect, and shall forthwith proceed to make a street scheme for such area as may seem expedient to the Board.

The Board to have power to make a street scheme.

31. The street scheme—

(1) shall, within the limits of the area comprised in the scheme, provide for—

(a) the acquisition of any land which will, in the opinion of the Board, be necessary for or affected by the execution of the scheme ;

(b) re-laying out all or any land including the construction and reconstruction of buildings and the formation and alteration of streets ;

(c) the draining and lighting of streets so formed or altered ;

(2) may, within the limits aforesaid, provided for (a) raising any land vested in or to be acquired by the Board which the Board may deem expedient to raise for the better drainage of the locality ; (b) forming open spaces for the better ventilation of the area comprised in the scheme, or of any area occupied by buildings constructed under sub-section (3) of this section (By Bom. Act IV of 1901) ; and

(3) may, within and without the limits aforesaid, provide for the construction of buildings for the accommodation of the poorer and working classes, including the whole or part of such classes to be displaced in the execution of the scheme. Such accommodation shall be deemed to include shops.

32. Upon completion of a street scheme the provisions of sections 27, 27A, 27B, 28 and 29 shall, with all necessary modifications, be applicable to the scheme in the same manner as if the scheme were an improvement scheme.

Procedure on the completion of a scheme.

Acquisition of Land.

46. Subject to the provisions of this Act, it shall be lawful for the Board to agree with the owners of any land or of any interest in land needed by the Board for the purposes of this Act, or with the owners of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or of any interest in such land, or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith.

The Board to have power to acquire land by agreement.

47. Notwithstanding anything contained in the Land Acquisition Act, 1894 (in this and the next succeeding section referred to as "the said Act"), the said Act shall not, except to the extent set forth in Schedule A, apply to the acquisition of land under this Act, but the said Act shall, to the extent set forth in the said schedule, regulate and apply to the acquisition of land otherwise than by agreement, and shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof, subject to the provisions of this chapter and to the provisions following (namely) :—

Extent to which Land Acquisition Act shall apply to acquisition of land otherwise than by agreement.

(1) A reference to any section of the said Act shall be deemed to be a reference to such section, as modified by the provisions of this chapter, and the expression "land," as used in the said Act, shall, in addition to the meaning included therein under clause (a) of section 3 of the said Act, be deemed, for the purposes of this Act, to include rights created by legislative enactment over any street; and clause (b) of section 3 of the said Act shall, for the purposes of this Act, be read as if the words and parentheses "(including the Crown)" were inserted after the words "includes all persons," and the words "or if he is the owner of any right created by legislative enactment over any street forming part of the land" were added after the words "affecting the land." (By Bom. Act II of 1908.)

(2) In the construction of sub-section (2) of section 4 of the said Act and the provisions of this chapter, the provisions of the said sub-section shall, for the purposes of this Act, be applicable immediately upon the passing of a resolution under section 23, 30, 32B or 38 and the expression "Local Government" shall be deemed to include the Board, and the words "such locality" shall be deemed to mean the locality referred to in any such resolution;

(3) In the construction of the sections of the said Act deemed to form part of this chapter and the provisions of this chapter, the publication of a declaration under section 29, 32, 32D or 39 shall be deemed to be the publication of a declaration under section 6 of the said Act :

" Provided that where land is acquired under section 27A or sub-section (2) of section 27B the date of the notification under section 27 or the date of the receipt by the Board of the written notice as the case may be shall be deemed to be the date of publication of a declaration under section 6 of the said Act :

Provided further that the provisions of sub-section (2) of section 23 of the said Act shall apply when land, other than land forming part of any sanctioned scheme prepared in accordance with the provisions of sections 23 and 30, is acquired specifically under this Act for the purpose either of a police accommodation scheme or of a poorer classes accommodation scheme." (By Bom. Act I of 1913.)

(4) In the construction of section 50, sub-section (2), of the said Act and the provisions of this chapter the Board shall be deemed to be the local authority or company concerned.

48. (1) For the purposes of this chapter a Tribunal of Appeal (hereinafter called the Tribunal) shall be constituted as hereinafter mentioned to perform the functions of the Court under the said Act, and, in the construction of the said Act and the provisions of this Chapter, the Tribunal shall be deemed to be the Court, and the award of the Tribunal, or, in the event of the award of the majority of the Tribunal, shall be deemed disagreement, to be the award of the Court, and shall, subject to the provisions for appeal hereinafter contained, be final, and the President of the Tribunal shall be deemed to be the Judge.

" (2) The decision of all questions of law and procedure and costs and apportionment of compensation shall rest solely with the President ; and any such question may be tried and decided in the absence of the assessors if in the opinion of the President their presence is unnecessary ; and when any such question is so tried and decided the decision of the President shall be deemed to be the decision of the Tribunal." (By Bom. Act I of 1913.)

(3) Such Tribunal shall consist of three members, that is to say, of a President and two assessors. The President and one of the assessors shall be appointed by Government by notification

A Tribunal of Appeal to be appointed to perform the functions of the Court.

Constitution of the Tribunal.

in the *Bombay Government Gazette*; the other assessor shall be appointed by the Corporation: Provided that any person who is a Trustee under this Act, or, who, by reason of the provisions of section 14, is disqualified to be a Trustee, shall be disqualified to be a member of the Tribunal.

(4) The President shall be either—
Selection of President.

(a) a member of the Judicial Branch of the Imperial or Provincial Civil Service of not less than ten years' standing, who shall have served as District Judge, or held judicial office not inferior to that of a First Class Subordinate Judge, for at least three years of that period; or

(b) a Barrister, Advocate or Pleader of not less than eight years' standing, who has practised as an Advocate or Pleader in the Bombay High Court. (By Bombay Act IV of 1901.)

(5) Members of the Tribunal shall be appointed for a term of one year, and any such member shall be eligible for re-appointment.
Duration of office

(6) It shall be lawful for Government, if they think fit, to remove for inability, or misbehaviour, or other good and sufficient cause, any member of the Tribunal.
Removal of members.

(7) Upon the occurrence of any vacancy in the Tribunal or during the temporary absence through illness or other unavoidable cause of any member thereof, Government or the Corporation (as the case may be), whichever of them shall have appointed the member of the Tribunal whose place shall be vacated, shall appoint forthwith a fit person to be a member (either temporary or permanent) of the Tribunal in lieu of the member whose place is vacated or who is temporarily absent as aforesaid.
Vacancies to be supplied.

(8) Each member of the Tribunal shall be entitled to such remuneration, either by way of monthly salary or by way of fees, or partly in one way and partly in the other, as Government may from time to time fix.
Remuneration of members.

(9) The remuneration mentioned in sub-section (8) and the cost of any special clerical or other establishments which shall be necessary shall be paid by the Board.
Expenses of the Tribunal to be paid by the Board.

(10) Any award or order of the Tribunal shall be enforced by the Small Cause Court as if it had been a decree or order of that Court.

Enforcement of the decision of the Tribunal.

(11) In any case in which the President may grant a certificate that the case is a fit one for appeal, there shall be an appeal to the High Court from the award or any part of the award of the Tribunal.

Appeal to the High Court from the decision of the Tribunal in certain cases.

(12) Subject to the sanction of Government, the President of the Tribunal shall have power—

Power of President to make appointments and rules with the sanction of Gov. ernment.

(a) to appoint such clerks and other officers or servants as may be necessary for carrying on the business of the Tribunal and to fix their salaries, which shall be paid accordingly by the Board ; and

(b) to make rules for the conduct of the business of the Tribunal, provided that such rules are not repugnant to the provisions of the Code of Civil Procedure ; and such rules shall come into force on receiving the sanction of Government.

“(13) The Tribunal shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means and (so far as may be) in the same manner, as is provided in case of a Civil Court under the Code of Civil Procedure. (By Bom. Act I of 1913.)”

49. In determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions shall apply :—

Special provisions as to compensation.

(1) The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building.

(2) When any addition to, or improvement of, the land or building has been made after the date of the publication under section 27, 32, or 39 of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made, so as to increase the amount of compensation to be paid for the land or building.

(3) In estimating the market-value of the building at the date of the publication of a declaration relating thereto under section 29, 32, or 39, the Court shall have due regard to the nature and then condition of the property and the probable duration of the building in its existing state and to the state of repair thereof and to the provisions of sub-sections (4), (5) and (6) of this section.

(4) When the owner of the land or building has, after the passing of this Act, and within twenty-four months preceding the date of the publication of a notification relating to the land or building under section 27, 32, or 39, made a return under section 155 of the Municipal Act of the rent of the land or building, the rent of the land or building shall not in any such case, save as the Court may otherwise direct, be deemed to be greater than the rent shown in the latest return so made: Provided that where any addition to or improvement of the land or building has been made after the date of such latest return and previous to the date of the publication of a notification under section 27, 32, or 39, relating to the land or building, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement ;

(5) If in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so overcrowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk of such overcrowding;

(6) If in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repair, the amount of compensation shall not exceed the estimated value of the building after being put into a sanitary condition, or into reasonably good repair, less the estimated expense of putting it into such condition or repair ;

(7) If in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials, less the cost of demolition.

50. When the Collector has made an award under section II of the Land Acquisition Act, 1894, as applied by this chapter, he may take possession of the land which shall thereupon vest absolutely in His Majesty free from all

Collector to take possession after making award and transfer land to the Board.

encumbrances, and the Collector shall, upon payment of the cost of the acquisition, make over charge of the land to the Board, and the land shall thereupon vest in the Board subject to the Board's liability to pay any further costs which may be incurred on account of the acquisition of the land. (By Bom. Act. II of 1908.)

Resumption of lands from the Board.

"51. Whenever any land specified in Schedule C or Schedule D is resumed by Government or the Corporation, respectively, or any land reclaimed within the limits specified in Schedule E is taken possession of by Government under the provisions of this Act, the market-value of the land as at the date of resumption, as determined by the Collector, or, in appeal, by the Tribunal, shall be paid to the Board by Government or by the Corporation as the case may be." (By Bom. Act I of 1913.)

"51A. For the purposes of the last preceding section the 'cost of effecting the reclamation' shall be deemed to mean the total cost of executing the scheme in which the area is comprised, including the cost of preliminary expenses and an allowance for supervision and interest and sinking fund charges during construction, which shall be calculated up to the date of the completion of the scheme." (By Bom. Act I of 1913.)

* * * *

SCHEDULE A.

(SEE SECTION 47.)

Portions of the Land Acquisition Act, 1894, regulating the acquisition of lands under this Act.

PART I.—Preliminary, except clauses (d), (e) and (f) of section 3.

PART II.—Acquisition, except sub-section (1) of section 4, section 6, and sub-section (2) of section 17.

PART III.—Reference to Court and procedure thereon, except sub-section (2) of section 23 and clauses (6) and (7) of section 24.

PART IV.—Apportionment of Compensation.

PART V.—Payment.

PART VI.—Temporary occupation of land.

PART VIII.—Miscellaneous, except section 54.

CITY OF BOMBAY IMPROVEMENT ACT, 1904.

ACT XIV OF 1904.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 21st
October 1904.)*

*An Act to supplement certain provisions of the City of Bombay
Improvement Act, 1898.*

WHEREAS it is expedient to supplement by legislation on the Council of the Governor-General for making Laws and Regulations certain provisions of the City of Bombay Improvement Act, 1898 ; It is hereby enacted as follows :—

1. The City of Bombay Improvement Act, 1898, shall, so far as regards the appellate jurisdiction conferred upon the High Court by section 48, sub-section (II), thereof, be as valid as if it had been passed by the Governor-General of India in Council at a meeting for the purpose of making Laws and Regulations.

Confirmation of section 48, sub-section (II), Bombay Act IV, 1898.

2. Subject to the provisions of section 48, sub-section (II), of the said Act, the provisions of the Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under that sub-section, and orders passed therein by the High Court may, on application to the Chief Judge of the Small Cause Court, be executed by him as if they were decrees made by himself.

Procedure applicable to appeals under section 48, sub-section (II), Bombay Act IV, 1898.

3. An appeal to the High Court under section 48, sub-section (II), of the said Act, shall, for the purposes of No. 156 of the Second Schedule to the Indian Limitation Act, 1877, be deemed to be an appeal under the Code of Civil Procedure in a case not provided for by No. 151 and No. 153 of that Schedule.

Period of limitation for such appeals.

APPENDIX C.

COGNATE MEASURES.

THE NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

ACT VIII OF 1873.

*An Act to regulate Irrigation, Navigation and Drainage in
Northern India.*

WHEREAS, throughout the territories to which this Act
extends, the Government is entitled to use
and control for public purposes the water
of all rivers and streams flowing in natural channels, and of
all lakes and other natural collections of still water ; and
whereas it is expedient to amend the law relating to Irriga-
tion, Navigation and Drainage in the said territories ; It is
hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called “The North-
ern India Canal and Drainage Act, 1873”:

It extends to the territories for the time being respectively
under the government of the Lieutenant-
Local extent. Governors of the North-Western Provinces
and the Panjáb, and under the administration of the Chief
Commissioners of Oudh and the Central Provinces ; and applies
to all lands whether permanently settled, temporarily settled,
free from revenue ;

Commencement. And it shall come into force on the pass-
ing thereof.

Interpretation-
clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Canal."

(1) "Canal" includes—

(a) all canals, channels and reservoirs constructed, maintained or controlled by Government for the supply or storage of water ;

(b) all works, embankments, structures, supply and escape-channels connected with such canals, channels or reservoirs ;

(c) all water-courses as defined in the second clause of this section ;

(d) any part of a river, stream, lake or natural collection of water, or natural drainage-channel, to which the Local Government has applied the provisions of Part II of this Act ;

(2) "Water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of Government, and all subsidiary works belonging to any such channel ;

(3) "Drainage-work" includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, formed or maintained by the Government under the provisions of Part VII of this Act, but does not include works for the removal of sewage from towns ;

"Vessel."

(4) "Vessel" includes boats, rafts, timber and other floating bodies ;

(5) "Commissioner" means a Commissioner of a Division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner ;

(6) "Collector" means the head Revenue Officer of a district, and includes a Deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector ;

"Collector."

(7) "Canal Officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof ;

"Canal Officer."

"Superintending Canal Officer" means an officer exercising general control over a canal or portion of a canal ;

"Divisional Canal Officer" means an officer exercising control over a division of a canal ;

"Sub-Divisional Canal Officer" means an officer exercising control over a sub-division of a canal.

"District."

(8) "District" means a district as fixed for revenue purposes.

4. The Local Government may from time to time declare, by notification in the official Gazette, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

All officers mentioned in section three, clause (7), shall be respectively subject to the orders of such officers as the Local Government from time to time directs.

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

5. Whenever it appears expedient to the Local Government that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal or drainage-work,

the Local Government may, by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

6. At any time after the day so named, any Canal Officer, acting under the orders of the Local Government in this behalf, may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

7. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section eight may be made before him.

8. No compensation shall be awarded for any damage caused by—

(a) stoppage or diminution of percolation or floods ;

(b) deterioration of climate or soil ;

(c) stoppage of navigation, or of the means of drifting timber or water cattle ;

(d) displacement of labour.

But compensation may be awarded in respect of any of the following matters :

Matters in respect of which compensation may be awarded.

(e) Stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the date of the said notification :

(f) Stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification :

(g) Stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification :

(h) Damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Limitation Act [1908], Part IV :

(i) Any other substantial damage, not falling under any of the above clause (a), (b), (c) or (d), and caused by the exercise of the powers conferred by this Act ; which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed ; and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clause (e), (f) or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against the Government, except by grant or under the Indian Limitation Act [1908], Part IV.

And no right to any of the advantages referred to in clauses (a), (b) and (c) of this section shall be acquired, as against the Government, under the same Part.

9. No claim for compensation for any such stoppage, diminution or damage shall be made after the expiration of one year from such stoppage, diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of claims.

10. The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant ; and the Land Acquisition Act [1894] shall apply to such enquiries :

Enquiry into
claims and amount
of compensation.

* * * * *

11. Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section eight, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

Abatement of
rent on interruption
of water-supply.

12. If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

13. All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of, and simple interest at the rate of six per cent. per annum shall be allowed on any such sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

Compensation
when due.

Interest.

PART III.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

14. Any Canal Officer or other person acting under the general or special order of a Canal Officer,

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon ;

Power to enter
and survey, &c.

and dig and bore into the sub-soil ;
and make and set up suitable land-marks, level-marks,
and water-gauges ;

and do all other acts necessary for the proper prosecution
of any enquiry relating to any existing or projected canal
under the charge of the said Canal Officer :

and, where otherwise such enquiry cannot be completed,
such officer or other person may cut down
Power to clear land. and clear away any part of any standing crop,
fence or jungle ;

and may also enter upon any land, building or water-course
on account of which any water-rate is charge-
Power to inspect able, for the purpose of inspecting or regulat-
and regulate water- ing the use of the water supplied, or of
supply. measuring the lands irrigated thereby or
chargeable with a water-rate, and of doing all things necessary
for the proper regulation and management of such canal :

Provided that, if such Canal Officer or person proposes to
enter into any building or enclosed court or
Notice of intend- garden attached to a dwelling-house not sup-
ed entry into plied with water flowing from any canal, he
houses. shall previously give the occupier of such
building, court or garden at least seven days' notice in writing
of his intention to do so.

In every case of entry under this section, the Canal Officer
shall, at the time of such entry, tender com-
Compensation for pensation for any damage which may be
damage caused by occasioned by any proceeding under this
entry. section ; and in case of dispute as to the suffi-
ciency of the amount so tendered, he shall forthwith refer the
same for decision by the Collector, and such decision shall be
final.

15. In case of any accident happening or being apprehend-
ed to a canal, any Divisional Canal Officer or
any person acting under his general or special
orders in this behalf may enter upon any
Power to enter lands adjacent to such canal, and may exe-
for repairs and pre- cute all works which may be necessary for the purpose of
vent accidents. repairing or preventing such accident.

In every such case, such Canal Officer or person shall
tender compensation to the proprietors or
Compensation for occupiers of the said lands for all damage
damage to land. done to the same. If such tender is not
accepted, the Canal Officer shall refer the matter to the Col-
lector, who shall proceed to award compensation for the

damage as though the Local Government had directed the occupation of the lands under section [35] of the Land Acquisition Act [1894].

* * * * *

23. Any person desiring that an existing water-course should be transferred from its present owner to himself, may apply in writing to the Divisional Canal Officer, stating—

Application for transfer of existing water-course.

(1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course ;

(2) that he desires the said Canal Officer, in his behalf and at his cost, to do all things necessary for procuring such transfer ;

(3) that he is able to defray the cost of such transfer.

Procedure there-upon. If the Divisional Canal Officer considers—

(a) that the said transfer is necessary for the better management of the irrigation from such water-course, and

(b) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal Officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section twenty-eight in respect of such transfer ;

and, upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district, through which such water-course passes.

24. Within thirty days from the publication of a notice under section twenty-two or section twenty-three, as the case may be, any person interested in the land or water-course to which

Objections to construction or transfer applied for.

the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

The Collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal Officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

25. If no such objection is made, or (where such objection is made) if the Collector over-rules it,

When applicant may be placed in occupation.

he shall give notice to the Divisional Canal Officer to that effect, and shall proceed

forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

* * * * *

28. No such applicant shall be placed in occupation of such land or water-course, until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

Expenses to be paid by applicant before receiving occupation.

In determining the compensation to be made under this section, the Collector shall proceed under the provisions of the Land Acquisition Act [1894]; but he may, if the person to be compensated so desire, award such compensation in the form of a rent-charge payable in respect of the land or water-course occupied or transferred.

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector as if it were an arrear of land-revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

Recovery of compensation and expenses.

* * * * *

PART VII.

OF DRAINAGE.

55. Whenever it appears to the Local Government that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage-channel, such Government may, by notification published in the official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Power to prohibit obstructions or order their removal.

Thereupon so much of the said river, stream or drainage-channel as is comprised within such limits, shall be held to be a drainage-work as defined in section three.

56. The Divisional Canal Officer, or other person authorized by the Local Government in that behalf, may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

Power to remove obstructions after prohibition.

If, within the time so fixed, such person does not comply with the order, the said Canal Officer may himself remove or modify the obstruction; and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land-revenue.

57. Whenever it appears to the Local Government that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

Preparation of schemes for works of improvement. or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands, the Local Government may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

58. The persons authorized by the Local Government to draw up such scheme may exercise all or any of the powers conferred on Canal Officers by section fourteen.

Power of persons employed on such schemes.

* * * * *

61. Whenever, in pursuance of a notification made under section fifty-five, any obstruction is removed or modified,

Disposal of claims to compensation. or whenever any drainage-work is carried out under section fifty-seven,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work, may be made before the Collector, and he shall deal with the same in the manner provided in section ten.

62. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of such claims.

THE INDIAN TELEGRAPH ACT, 1885.

ACT XIII OF 1885.

AMENDED BY ACTS XI OF 1888 AND VII AND XIV OF 1914.

WHEREAS it is expedient to amend the law relating to telegraphs in India ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title,
local extent and
commencement.

1. This Act may be called the Indian Telegraph Act, 1885.

[(2) It extends to the whole of British India, including the Sonthal Parganas and the Pargana of Spiti, and it applies also to—

- (a) all native Indian subjects of His Majesty in any place without and beyond British India,
- (b) all other British subjects within the territories of any Native State in India, and
- (c) all servants of the King, whether British subjects or not, within the territories of any Native State in India.]

(3) It shall come into force on the first day of October, 1885.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) " telegraph " means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for making [transmitting or receiving] telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism :

(2) " telegraph officer " means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Government or by a person licensed under this Act :

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered :

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same :

(5) "post" means a post pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line :

(6) "telegraph authority" means the Director-General of [Posts and] Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act :

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor-General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor-General in Council, may—

(a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act ; or

(b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

6. Any Railway Company, on being required so to do by the Governor-General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

* * * * *

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

Power for telegraph authority to place and maintain telegraph lines and posts.

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property :

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained :

(b) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post ; and,

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority ; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Power to enter on property in order to repair or remove telegraph lines or posts.

* * * * *

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power for local authority to require removal or alteration of telegraph line or post.

14. The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain) :

Power to alter position of gas or water pipes or drains.

Provided that—

(a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is ;

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

15. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf.

Disputes between telegraph authority and local authority.

(2) An appeal from the determination of the officer so appointed shall lie to the Local Government ; and the order of the Local Government shall be final.

PROVISIONS APPLICABLE TO OTHER PROPERTY.

16. (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

17. (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with

Removal or alteration of telegraph line or post on property other than that of a local authority.

that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly :

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form ; and the order so made shall be final.

PROVISIONS APPLICABLE TO ALL PROPERTY.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of a telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

THE INDIAN TRAMWAYS ACT, 1886.

ACT XI OF 1886.

An Act to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways ; It is hereby enacted as follows :—

Preliminary.

Short title and commencement. 1. (1) This Act may be called the Indian Tramways Act, 1886 ; and
(2) It shall come into force at once.

Local extent. 2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,—

(1) " local authority " means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund :

(2) " road " means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface-soil and sub-soil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road :

(3) " road-authority," in relation to a road, means—

(a) if a local authority maintains and repairs the road then that authority ;

(b) if a local authority does not maintain and repair the road, and the road is neither vested in His Majesty nor maintained and repaired by the Government then the person in whom the road is vested ; and

- (c) if a local authority does not maintain and repair the road, and the road is vested in His Majesty or maintained and repaired by the Government, then the Local Government :
- (4) "circle," in relation to a local authority or road-authority, means the area within the control of that authority :
- (5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway :
- (6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order :
- (7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved :
- (8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway :
- (9) "carriage" in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power :
- (10) "toll" includes any charge leviable in respect of the use of a tramway :
- (11) "lessee" means a person to whom a lease has been granted of right of user of a tramway and of demanding and taking the authorised tolls :
- (12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act :
- (13) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction :
- (14) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by a name or by virtue of his office to discharge within any local area the functions of a Collector under this Act : and
- (15) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorising the Construction of Tramways.

Application for and consent necessary to making of order

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on application made—

(a) by the local authority of the circle with the consent of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority ; or

(b) by any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority :

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, or attaches conditions to its consent, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, if, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed.

Consent of local or road authority not necessary in certain cases.

6. (1) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

Procedure for making order.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may

desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any; and that publication shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following among other matters, that is to say:—

(a) a period before the expiration of which, the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

* * * * *

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act [1894], in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided ; and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

* * * * *

39. (1) Notwithstanding anything contained in this Act, or in an order or any rule made under this Act, a promoter shall not acquire any right other than that of user only over a road

Promoter to have right of user only.

along or across which he lays a tramway, nor shall anything contained in this Act, or in an order or any rule made under this Act, exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

40. (1) Nothing in this Act, or in an order or any rule made under this Act shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

**Saving of power
over roads traversed
by tramways.**

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

41. Nothing in this Act, or in an order or any rule made under this Act, shall affect the powers of a local authority or of a Magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

**Saving of power of
local authority and
police to regulate
traffic on roads.**

INDIAN RAILWAYS ACT.

ACT IX OF 1890.

AS AMENDED BY ACT IX OF 1896.

An Act to consolidate, amend and add to the law relating to Railways in India.

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India ; it is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This may be called the Indian Railways Act, 1890.

(2) It extends to the whole of British India, inclusive of Upper Burma, and of British Baluchistan, and applies also to all subjects of His Majesty within the dominions of Princes and States in India in alliance with His Majesty, and to all native subjects of His Majesty without and beyond British India and those dominions.

(3) It shall come into force on the first day of May, 1890.

* * * * *

3. (4) " railway " means a railway, or any portion of a railway, for the public carriage of passengers, animals, or goods, and includes—

Definitions. (a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway ;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway ;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway ; and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and, belong to or are hired or worked by the authority administering the railway :

(5) " railway company " includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway :

(6) " railway administration," or " administration," in the case of a railway administered by the Government or a Native State, means the Manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

7. (1) Subject to the provisions of this Act, and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force :—

Authority of railway administrations to execute all necessary works.

(a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper ;

(b) alter the course of any rivers, brooks, streams or watercourses for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper ;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway ;

(d) erect and construct such houses, warehouses, offices and other buildings and such yards, stations, wharves, engines, machinery, apparatus and other works and conveyances as the railway administration thinks proper ;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead ; and

(f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the Governor-General in Council.

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act alter the position of any pipe for the supply of gas, water, or compressed air, or the position of any electric wire or of any drain not being a main drain :

Alteration of
pipes, wires, and
drains.

Provided that—

(a) when the railway administration desires to alter the position of any such pipe, wire, or drain it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire or drain, or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is ;

(b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage as the case may be.

9. (1) The Governor-General in Council may authorise any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accidents, and to do all such works as may be necessary for the purpose.

Temporary entry
upon land for repair-
ing, or preventing
accident.

(2) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the Governor-General in Council, but in such a case shall, within seventy-two hours after such entry, make a report to the Governor-General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine if the Governor-General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

10. (1) A railway administration shall do as little damage as possible in the exercise of the power conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8 or 9.

(2) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation.

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely :—

Accommodation works.

(a) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor-General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches, tunnels, culverts, drains, water-courses or other passages, over or under or by the sides of the railway, of such dimensions as will, in the opinion of the Governor-General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the works specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos, namely :—

(a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive, and have been paid compensation in consideration of their not requiring the works to be made ;

(b) save as hereinafter in this chapter provided, a railway administration shall not, except on the requisition of the Governor-General in Council, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic ;

(c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) The Governor-General in Council may appoint a time for the commencement of any work to be executed under subsection (1), and, if for fourteen days next after that time the railway administration fails to commence to work or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor-General in Council may execute it and recover from the railway administration the cost incurred by him in the execution thereof.

12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the Governor-General in Council.

Power for owner, occupier or local authority to cause additional accommodation works to be made.

INDIAN WORKS OF DEFENCE ACT, 1903.

ACT VII OF 1903.

An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

[NOTE :—This Act reproduces the Land Acquisition Act, 1894, almost verbatim.]

INDIAN ELECTRICITY ACT, 1910.

ACT IX OF 1910.

Sec. 57(1) " In section 40, sub-sec. (1) cl. (b) and section 41, sub-sec. (5) of the Land Acquisition Act, 1894, the term 'work' shall be deemed to include electrical energy supplied, or to be supplied, by means of the work to be constructed :

(2) The Local Government may, if it thinks fit, on the application of any person not being a company, desirous of obtaining any land for the purpose of his undertaking, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the person were a company"

CALCUTTA MUNICIPAL ACT, 1899.

BENGAL ACT III OF 1899.

Acquisition and Disposal of Land and Buildings.

557. Any land or buildings which any municipal authority is authorised by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894; and for that purpose the said Act shall be subject to the following amendments, namely:—

Application of Land Acquisition Act, 1894, with amendments.

(a) The expression "Collector" means also the Chairman of the Corporation of Calcutta.

(b) Section 17 of the Land Acquisition Act shall apply also in the case of any area which is stated in a certificate granted by a Magistrate to be unhealthy. Before granting any such certificate the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9 of the said Act, and shall hear without any avoidable delay any objections which may be urged by them against the application of the said section 17. When proceedings have been taken under the said section 17 for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.

(c) The market-value of the land or building shall be deemed, for the purposes of clause *first* of sub-section (1) of section 23 of the said Land Acquisition Act, to be the market-value according to the disposition of the land or building at the date of the publication of the declaration relating thereto under section 6 of the said Land Acquisition Act:—

Provided as follows:—

(i) if it be shown that, before such declaration was published, the owner of the land or building had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him;

(ii) if the market-value is specially high in consequence of the property being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land or building if put to ordinary uses;

(iii) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published, such increase shall be disregarded unless it be proved that the improvement was made *bonâ fide* and not in contemplation of proceedings for the acquisition of the land or building being taken under the said Land Acquisition Act.

(d) The market-value of the land or building shall, until the contrary is shown, be presumed, for the purposes of the said clause *first* of sub-section (1) of section 23, to be twenty five times the annual value of the property, as entered in the assessment-book prescribed by this Act :

Provided that this presumption shall not be made in respect of any land or building until a re-assessment has been made, after the commencement of this Act, for the district in which such land or building is situated.

(e) Clauses *fourthly* and *fifthly* of sub-section (1) of section 23 of the said Land Acquisition Act shall not apply in the case of tanneries, *surki* mills or other offensive trades.

APPENDIX D.

PROCEEDINGS IN COUNCIL.

ACT I OF 1894.

STATEMENT OF OBJECTS AND REASONS.

1. For several years past the amendment of the Land Acquisition Act, 1870, has been under consideration by the Government of India in communication with Local Governments.

2. Before the passing of that Act, the valuation of the lands, which it was found necessary to take up for the execution of public works, was entirely in the hands of Arbitrators, from whose decision there was no appeal. This system led to a lamentable waste of the public money, both because the Arbitrators were incompetent, and sometimes, it is to be feared, corrupt, and also because the law, as it then stood, laid down no instructions for their guidance in the performance of their duties. This latter defect, among others, was remedied by the Act of 1870, which it is now proposed to amend, and which contains detailed instructions as to the matters which are to be considered, and which are to be neglected, in awards of compensation for lands acquired under its provisions. The Act of 1870 also provided for the abolition of the system under which uncontrolled discretion was entrusted to Arbitrators, and, in lieu thereof, required the Collector, when unable to come to terms with the persons interested in land which it was desired to take up, to refer the difference for the decision of a Civil Court, usually that of the District Judge. In the disposal of such references, the Court is aided by Assessors, and its finding is final if the Judge and one or more of the Assessors agree. If, however, the Judge and the Assessors disagree, an appeal is allowed, which usually lies to the High Court.

3. The Act of 1870 has not, in practice, been found entirely effective for the protection either of the persons interested in lands taken up or of the public purse. The requirement that the Collector shall refer for the decision of the Court every petty difference of opinion as to value, and every case in which any one of perhaps a large number of persons fails to attend before him, has involved

in litigation, with all its trouble and delay and expense, a great number of persons whose interest in the land was extremely insignificant. It has, in fact, frequently been the case that the owners of small pieces of land have had to pay Court costs to an amount far exceeding the value of the land itself.

4. On the other hand, the provisions of the Act as to the incidence of costs, the whole of which fall on the Collector if the final award is ever so little in excess of the amount of his tender, are such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs is so great, that claimants are in the position of risking very little in order to gain very much, and have, therefore, every motive to refuse even liberal offers made by the Collector, and to try their luck by compelling a reference to the Court. Much the same may be said as to the provisions of the existing law regarding the payment of interest. No matter how fair the original offer of the Collector and how groundless the refusal to accept the compensation he has tendered, interest is payable on the amount of the award finally arrived at, from the date of the Collector's taking possession of the land. This may not be for a period of two or three years, and, as interest continues to run until the litigation is finally completed, it is to the advantage of the landowner to protract the proceedings to the utmost. All this casts a very heavy and undeserved burden on the public purse.

5. It is proposed, therefore, to amend the law by making the Collector's award final, unless altered by the decree in a regular suit. Persons interested in land taken up for public works will thus still have the opportunity, if they desire it, of referring to an authority quite independent of the Collector their claims to more substantial compensation than the Collector has awarded; and will in all cases have a further right of appeal to the regular Appellate Courts. They will no longer, however, be encouraged to litigate by the feeling that they can hardly lose, but may make a great gain by doing so.

6. This change in the procedure for determining the valuation of lands taken up for public works will also render it possible to dispense with the services of the Assessors, who are now supposed to assist the Court. Considering the difficulty, almost throughout the country, of obtaining the services of such Assessors as are really qualified to form a sound opinion on the subject of the valuation of land, it is believed that the proposal to dispense with them, and to leave the matter to the sole arbitrament, first of the Collector, and then of the Judge, will in no way diminish the efficiency of the Courts in enquiries in which the value of lands is in issue. It will certainly tend to shorten litigation and to diminish expense.

7. Several minor amendments in the law, which experience has shown to be desirable, are included in the Bill.

11th March, 1892.

PRELIMINARY REPORT.

The following Report of the Select Committee on the Bill to amend the Land Acquisition Act, 1870, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 2nd February 1893 :—

“ 1. We, the undersigned, Members of the Select Committee to which the Bill to amend the Land Acquisition Act, 1870, was referred, have considered the Bill and have now the honour to submit this our preliminary Report, with the Bill as amended by us annexed thereto.

2. In section 3 of the Bill we have added a clause amending the definition of “ Court.” It appears to us that all references from the Collector’s authority, should be to an independent judicial authority, and, now that the Punjab and Oudh have divided their judicial from their revenue establishments, there are few parts of India in which there are not judicial officers who have no concern with the executive administration. We think, therefore, that the time has now come when the Court to which references under the Act will be made should be generally the principal Civil Court of original jurisdiction. To meet, however, the case of provinces which have still no Courts of separate civil jurisdiction, or the case in which pressure of business may require assistance to the ordinary Civil Court, we have retained the clause in the original definition which empowers Local Government to appoint special judicial officers to perform the functions of a Judge under the Act.

3. Section 7 of the Bill recasts sections 11 to 15, both inclusive of the Act. To the draft section 11 we have added words requiring the Collector to enquire into the respective interests of the persons claiming the compensation, as well as into the area and value of the land to be acquired. As regards draft section 12, we are of opinion that a claimant of compensation should not be precluded from taking exception to the measurements of the Collector, if he has good grounds for considering them incorrect ; and we think that the Collector should give intimation of his award to any of the persons interested who may not be present when the award is made. We have altered the draft section 12 accordingly.

4. Section 8 of the Bill amends section 16 of the Act by requiring the Collector to take possession of the land immediately he has made the award, with a proviso permitting him to leave the occupants in occupation until possession of the land is required, upon such conditions as he and they may agree upon. We prefer the terms of the existing law, which leave to the Collector discretion as to immediate entry upon the land, and have changed section 8 of the Bill accordingly. Where the Collector postpones entry for any reason, he will ordinarily do so, as at present, on terms adjusted with the occupants ; and in a later section

we have provided for compensation to the occupant if his profits should be in any way *bond fide* reduced in the period between declaration under section 6 and the Collector's entry into possession.

5. In section 17 of the Act, which regulates the powers of the Collector in cases of urgency, we think that the special damage for which the persons interested are to be compensated should be expressly defined as the damages incident to such sudden dispossession, and have by section 9 of the Bill added some words to the section accordingly.

6. By sections 10 and 11 of the Bill Parts III and IV of the present Act are repealed, and a new procedure substituted for that which now obtained in the decision of objections to the Collector's award. Under the Act, if any one of the persons interested does not attend in the proceedings before the Collector, or if the Collector is unable to agree with the persons interested as to the amount of the compensation, or if upon his enquiry questions arise respecting the title to the land or interest therein, the Collector is bound to refer the matter to the Court, which then proceeds to determine it with the help of Assessors appointed by the Collector and the persons interested respectively. It was pointed out in the Statement of Objects and Reasons that these provisions entailed in a great number of cases unnecessary trouble, delay and expense to the owners of land acquired under the Act, for experience has shown that failure in attendance before the Collector is more frequently due to mere indifference than to any actual dissatisfaction with the award. In the acquisition of land for a railway, for example, it constantly happens that the interest of an individual owner is so insignificant that he finds it not worth his while to attend before the Collector. His absence, however, under the rigorous conditions of the Act, necessitates a reference of the case by the Collector, with all the attendant trouble and expense, not merely to the proprietor who was absent, but to the many others who may be associated with him in the matter and who may be themselves perfectly satisfied with the award. The Bill accordingly proposed to make the Collector's award final, with the proviso that any person dissatisfied could sue the Collector in the Civil Court. The Committee are advised that in order to attain the end in view so radical a change in the procedure for the adjustment of the compensation is unnecessary. They think with more than one of the Governments consulted that it will be sufficient to provide that the Collector's reference to the Civil Court shall only be made when a person, dissatisfied with the award, asks that it be referred, the award being otherwise final. This change in the present law is reasonable, and the Committee are of opinion that it sufficiently corrects the main practical defect of the Act. They cannot leave out of sight that the valuations upon which a Collector proceeds are ordinarily made by native subordinates whose official interests lead them to make the valuation on the lowest possible scale, and that in many cases

the owners of land acquired under the Act are poor peasants who have neither the means nor the courage to undertake a formal suit against the Collector of their district, and who would accept very inadequate compensation rather than do so.

As to the discontinuance of the system of Assessors all authorities are agreed. It is the universal remark that competent Assessors are not easily procurable, and that there is an irresistible tendency for the Assessor to become not an adviser but a partisan, adding very largely to the cost of the trial without assisting the Judge. In the words of Mr. Justice Parker, "the nominees are faithful to their trust and deliver their opinion with minds altogether unaffected by the evidence."

The Committee have accordingly substituted for sections 10 and 11 of the Bill a revision of Parts III and IV of the Act effected in accordance with the views which have thus been expressed. The Collector's award will be referred to the Court whenever any person interested asks that it be referred, but only then. The Judge will give his decision on it, and in all cases there will be a right of appeal from the Judge's award to the High Court.

7. In Part III we have made some alterations of the Act in detail. Section 24 of the Act defines the matters to be considered in determining compensation. The Committee are of opinion that the Bill introduced last year rightly required the market-value to be taken at the time of the declaration under section 6, and not, as in the Act, at the time of the award; but this change in the law required the addition to the section of a clause bringing under the consideration of the Court any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession, as also the value of any standing crops or trees that may be on the land when he takes possession.

It appears more convenient to insert here than in a later part of the Act the instruction contained in section 42 of the Act that, in addition to the amount of any compensation due to the owner of the land acquired, fifteen per centum on the market-value shall be given in consideration of the compulsory nature of the acquisition. We have, accordingly, added a clause to this effect in the section by which we amend section 24 of the Act, and the Collector or Judge making the award will find embraced in a single section the whole of the details required for the completion of his estimate of compensation.

This section, as drafted in the Bill, contained a definition of "market-value" to which exception has been widely taken, as inapplicable to many parts of the country, and, when applicable, open to much objection. We agree with the Lieutenant-Governor of the Punjab and the High Court of Bengal that no attempt should be made to define strictly the term in the Act, and that the price which a willing vendor might be expected to obtain in the open

market from a willing purchaser should be left for the decision, primarily, of the Collector and, ultimately, of the Court.

8. The Act (section 33) directs that when the Judge's award does not exceed that of the Collector, the costs of the reference to the Judge shall be paid by the person interested, but that when the Judge's award exceeds the Collector's, the whole of the costs of the reference shall be paid by the Collector. In the Statement of Objects and Reasons it was noticed that this provision led to extravagant and speculative claims, and in the Bill as introduced the adjudication of costs is left to the Courts in accordance with the ordinary rules of the Code of Civil Procedure. We think the rules which guide the adjudication of costs between litigants cannot fairly be employed in the decision of reasonable objections to the sufficiency of a Collector's award. We are of opinion that, when the Judge finds the Collector's award to have been inadequate, the Collector should ordinarily pay the costs of the reference, but we have inserted a clause giving discretion to the Court to give the Collector part of his costs whenever the claim of the objector proves to be extravagant. It will be remembered that references to the Court will, in future, be much less frequent, and that if the system of Assessors be discontinued, the costs in such references will be much reduced.

9. In the sections which constitute Part IV of the Act (Apportionment of Compensation), we have inserted words which bring under the orders of the Court the issue as to the persons entitled to the compensation, as well as that of the share which each is entitled to receive.

10. Chapter V of the Act concerns the payment of compensation. We have added clauses to section 40 as amended by section 12 of the Bill, empowering, on the one hand, the Collector to deposit the amount of his award in Court, when for any reason there is no person able and willing to receive it, and, on the other, empowering the owner of the land, if dissatisfied with the award, to accept the amount under protest. To that extent it will no longer be to the advantage of the owner to protract the proceedings and run up a claim for interest; for if, notwithstanding the express privilege given to the owner, he refuses to take the compensation-money placed at his disposal, he has no claim to interest on it.

11. In Part VII of the Act (Acquisition of Land for Companies) two sections have been added to except from the provisions applicable to ordinary Companies those Companies for which, under contract with the Secretary of State, Government is expressly bound to provide land. In Part VIII of the Act (section 51) we have, at the instance of the Lieutenant-Governor of Bengal, empowered Collectors and Judges to serve any notices under the Act by registered letter. We think it necessary, however, expressly to require that service can be proved only by production of the addressee's receipt.

12. Section 54 of the Act gives to the Government or the public bodies whom it represents power of withdrawal from land it has proposed to acquire. This power, however, must be exercised before the award is made. After award withdrawal is prohibited, whatever may be the circumstances. Experience has shown that the only occasions on which powers of withdrawal would be really useful are when an award has shown that the Government was seriously misled by an under-estimate of the value of the land. A case has been reported in which a municipality has been nearly ruined by being compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation. We think, therefore, that power to withdraw should be given after, as well as before, the award, but that, if so exercised, it should only be on terms of the most liberal compensation to the owner and that, if he is dissatisfied with the Collector's offer, he should have the same rights of reference to the Judge as in cases of acquisition.

13. To section 55, as amended by the Bill, we have added a clause permitting references to the Court to determine summarily certain questions of fact arising under the section.

14. Before the Bill is finally passed we think it would be desirable that the Act of 1870 should be wholly repealed and re-enacted with the amendments now proposed, or such of them as may be eventually adopted."

SECOND REPORT.

The following Further (and Final) Report of the Select Committee on the Bill to amend the Land Acquisition Act, 1870, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 23rd March, 1893:—

"We, the undersigned, Members of the Select Committee to which the Bill to amend the Land Acquisition Act, 1870, was referred, considered the Bill as amended by our Preliminary Report of the 1st February, and have now the honour to submit this our Further and Final Report. In our Report of February last we recommended that the Act of 1870 should be wholly repealed and re-enacted with such amendments as might be approved by the Council. We have now acted upon this recommendation, and we attach to this Report a Bill repealing the Act of 1870 and re-enacting it with amendments.

2. We have made a few changes in the recommendations made in February. In the subsequent remarks the references are to the sections of the Bill which we now present.

3. In section 3, the interpretation-clause, we have added at the instance of the Governments of Bombay and the Punjab and the Chief Commissioner of Burma, a provision which will enable the Local Government to apply the Act for the acquisition of village-sites in those parts of the country where it may be customary for the State to provide village-sites. The Committee are in concert with the great majority of the authorities consulted in declining to recommend any further extension of the scope of the Act.

4. In section 17 we have introduced a sub-section permitting a shorter procedure under the direct orders of the Government in those cases where sudden changes in the course of a river require new land to be immediately taken for the convenience of the traffic on a railway.

5. In section 19 we have, on the suggestion of the High Court of Bengal, added to the particulars which will be included in the report of the Collector to the Judge when a matter of dispute is referred for the decision of the Civil Court.

6. In section 27 we have widened the discretion of the Judge in the apportionment of costs, to meet an objection pressed by the Lieutenant-Governor of Bengal. It is represented that the owners of land frequently suppress the evidence as to the value of their property, which it is their duty to adduce before the Collector, hoping to deploy it to greater advantage before the Judge. We have now given express power to the Judge to give effect to this consideration in his award of costs when he is of opinion that evidence given before him has been wilfully kept back in the proceedings before the Collector.

7. We have removed to Part VIII the sections which now stand there as sections 53 and 54. They concern questions of procedure in the Civil Court, and, being thus made generally applicable, several sections in earlier parts of the present Act become superfluous, and have been accordingly omitted.

8. Section 31 contains the regulations as to the payment of the compensation-money. To this we have added additional sections laying down the procedure of the Collector and the Judge in those cases in which the occupant of the land acquired is from any disability incompetent to alienate it, or in which the compensation-money must remain in deposit till the settlement of a dispute as to title. One of the objections urged by Local Governments against the present law was that excessive charges of interest accumulated against Government when owners refuse the Collector's award. The revised Bill met this objection by requiring the Collector to make immediate payment of his award, and empowering the owner to take payment of the compensation tendered, without prejudice to a protest regarding the sufficiency of it. In the case above-mentioned, however, it is only fair to the owner that the compensation-money deposited

by the Collector should be immediately so invested as to yield him interest till the title to it is settled. We have added a clause giving formal power to the Collector with the sanction of the Local Government to adjust compensation by an exchange of land, a method of settlement which has been found in some provinces useful and convenient to all parties.

9. In this connection we may remark, in answer to a criticism by the Bengal Board of Revenue, that a deposit of money by the Collector in a Civil Court is, we understand, a paper transaction, which merely places the amount at the credit of the Court in its personal ledger in the Collector's treasury.

10. Part VI of the revised Bill, as of the present Act, concerning the temporary occupation of land, permits a reference to the Civil Court as to the sufficiency of the Collector's compensation. The Governments of Bombay and the North-Western Provinces have asked that the reference may include a question as to the apportionment of the compensation. We have adopted this suggestion.

11. We have altered the terms of the first clause of section 48, which gives certain powers to Government to withdraw from a contemplated acquisition of land so as to make it clear that this withdrawal may be made at any time before possession is taken but not afterwards. Instances were quoted in our Preliminary Report in which the Collector was proved by the Judge's award to have been seriously misled as to the value of the land, and in which the Government would not have acquired the land had it received a correct appraisalment. We think that a Government which provides compensation from the taxes of the Empire should have larger powers of withdrawal than are given by the present Act, but we are of opinion that no such power should be given after possession has once been taken, and that each Local Government must protect itself by executive instructions to Collectors to refrain from taking possession, until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the property.

12. To section 50 we have added, at the desire of the Government of Bombay, a clause permitting the appearance before the Collector or the Court of the representative of a Local authority or company on whose behalf land is being acquired. We cannot, however, agree that this authority should be permitted to appeal from the Collector's award. We have not given to Government itself power to make this appeal, because the Collector is only the agent of Government in the acquisition of land; his action is taken under rules laid down for his guidance which include a preliminary valuation; and these rules ordinarily provide, and ought to provide, that where the Collector finds cause to anticipate that his eventual award will substantially exceed his provisional estimate, he shall stay proceedings till he receives the further instructions of higher authority. No local authority

or company is compelled to proceed under the Land Acquisition Act. If it can procure its land more cheaply by private negotiation, it is certainly at liberty to do so, but, if it elects to set in motion the very special powers given to Government for public objects it can expect no higher privileges and powers than those given to Government itself.

13. We may explain, in answer to a criticism by the Board of Revenue, Lower Provinces, that power was given to the Collector in section 17 to give special damages for sudden dispossession in order to cover injuries which sudden dispossessions constantly entail. If, for instance, an owner is suddenly deprived of a pasture meadow, the market-value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We think it right that the Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put.

14. We have again considered the question of a definition of the term "market-value," but we adhere to the opinion of our Preliminary Report that it is preferable to leave the term undefined. No material difficulty has arisen in the interpretation of it; the decisions of the several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller; but the introduction of a specific definition would sow the field for a fresh harvest of decisions; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained.

15. The Bombay Government have pointed out the difficulty of discriminating accurately between clause (3) of section 24 and clause (4) of section 25 of the present Act. The former permits to be taken into consideration in an award of compensation any damage sustained by reason of the acquisition injuriously affecting other property of the owner. The latter excludes from consideration any damage caused by the use to which the land acquired will be put, and it was contended that under the latter clause it was doubtful whether an owner could be compensated for the damage caused to the rest of a building-site by the construction on part of it of a public latrine. We think that, even as the Act at present stands, there is no doubt of the right of the owner to compensation for damage of this sort; but we have so altered clause (4), section 24 of the Bill, as to make it quite clear that we exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put; that is to say, if garden lands are appropriated for a latrine, the owner will get compensation as for garden lands without reference to the lower value they will subsequently have.

16. The other alterations are merely verbal amendments, and need not be referred to in detail."

THIRD REPORT.

The following Report of the Select Committee on the Bill was presented to the Council on the 25th January 1894:—

“We, the undersigned, Members of the Select Committee to which the Bill to amend the Land Acquisition Act, 1870, has been recommitteed, have considered the Bill as amended by the former Select Committee and appended to their Report dated 22nd March 1893, and have now the honour to submit this our Report.

2. We have only a few changes to recommend in the amended Bill. They will be found printed in italics in the copy of that Bill which we attach to this Report.

3. We propose that the Bill should not come into force until the 1st March, 1894, so as to allow an interval between the date of its passing and its coming into force, during which the officers concerned may become acquainted with its provisions.

4. In order to prevent any doubt as to the right to compensation of persons who own easements affecting lands taken up under the Bill, we have added an explanation to the definition of ‘person interested’ making the definition expressly cover such persons.

5. We have amended section 5 so as to restrict references of disputes as to the amount to be paid for damage under that section to the chief revenue-officers of districts, as we are of opinion that such references should be decided by these officers only.

6. The object of the amendment we have suggested in the proviso to section 6 is to enable land to be acquired under the Bill for the purposes of colleges, hospitals, and other public institutions which are in some cases only partly supported out of public revenues or the funds of local authorities.

7. The words we have added to section 9 (2) will enable the Collector to require persons to put their statements in writing in all cases in which he may consider this course necessary or desirable. Since the Collector is bound to make an award under section 11, it will prevent misunderstanding to give him this power. •

8. A question having been raised as to the competency of the Collector to summon the parties interested as witnesses under section 14, we have thought it well to remove all doubt by inserting a specific reference to such parties in the section.

9. We have proposed the addition to section 17(2) of the words printed in italics, as the language of the sub-section as settled by the former Select Committee did not appear to us to be sufficiently wide to provide for all the cases in which it may be desirable that a Railway Administration should acquire the immediate possession of land. Such acquisition is sometimes necessary for the maintenance of the traffic of a line when no river-side station is involved.

or company is compelled to proceed under the Land Acquisition Act. If it can procure its land more cheaply by private negotiation, it is certainly at liberty to do so, but, if it elects to set in motion the very special powers given to Government for public objects it can expect no higher privileges and powers than those given to Government itself.

13. We may explain, in answer to a criticism by the Board of Revenue, Lower Provinces, that power was given to the Collector in section 17 to give special damages for sudden dispossession in order to cover injuries which sudden dispossessions constantly entail. If, for instance, an owner is suddenly deprived of a pasture meadow, the market-value of the meadow may not represent the actual amount of his loss. It may be impossible to find fresh pasture for his cattle in the emergency except at special charges. We think it right that the Collector should be empowered whenever he deprives a man suddenly of his land, to meet liberally the exceptional expenses to which the owner may be put.

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16. The other alterations are merely verbal amendments, and need not be referred to in detail."

ACT XVIII OF 1885.

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STATEMENT OF OBJECTS AND REASONS.

" THE object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act (1870).

2. Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (sections 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not, however, re-enacted in the Act of 1870, which, as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

3. Hitherto, this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether.

4. Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adapted to the circumstances of the case. It follows rather the rules contained in the English Railway Clauses Consolidation Act, 1845 (8 & 9 Vic., c. 20, ss. 77 *et seq.*), which it extends to the acquisition of land for all purposes and not merely for the construction of Railways.

5. It provides, first (section 2), that when a declaration is made by the Local Government under section 6 of the Land Acquisition Act, the Local Government may, if it thinks fit, insert in the declaration a statement that any mines or minerals lying under the land to be acquired are not needed, and that if any such statement is inserted in the declaration, the mines or minerals lying under the land shall not, when the Collector takes possession of the land under section 16 or section 17 of the Act, vest in the Government.

6. It then (section 3) declares that if the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working the same, he shall give the Local Government notice in writing of his intention so to do thirty days before the commencement of working.

7. Next (section 4), the Bill empowers the Local Government to cause the mines or minerals to be inspected by a person appointed by it for the purpose.

8. If it appears (section 5) to the Local Government that the working of the mines or minerals is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice, offer either—

(a) to pay compensation for the mines or minerals to the owner, lessee or occupier ;

(b) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions, as the Local Government may in its offer specify.

If the offer mentioned in case (a) is made, then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case (b) is made, then he may not work or get the mines or minerals, save in the manner and subject to the restrictions specified by the Local Government.

9. The Bill next provides (section 6) for the manner in which the amount of compensation to be paid under section 5 is to be determined.

10. Should, however, the Local Government not offer to pay any compensation, section 7 permits the owner, lessee or occupier of the mines or minerals to work the mines in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate. Should any damage or obstruction be caused by improper working of the mines, the section provides for the repairing of the damage or the removal of the obstruction by or at the cost of the owner, lessee or occupier.

11. Sections 8 and 9 provide for the inspection of mines for the purpose of ascertaining whether they are being worked or have been worked so as to damage the land which has been acquired, and section 10 declares that if any mines have been improperly worked, the Local Government may require the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary for making safe the land acquired and preventing injury thereto.

12. Lastly, section 11 makes the provisions of sections 3 to 10 applicable to cases where the land acquired has been transferred to a company, and section 12 defines what the term 'Company' as used in the Bill means."

24th February, 1885.

REPORT OF SELECT COMMITTEE.

The following Report of the Select Committee on the Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act (1870), was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 23rd September, 1885 :—

“ WE, the undersigned, Members of the Select Committee to which the Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act (1870), was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

2. Some of the Local Governments have objected to the Bill being applied to the provinces under their administration on the ground that, having regard to the manner in which the right to minerals is regulated in those provinces, it is unnecessary there, and that, if unnecessary, it would only prove an encumbrance and complication in the acquisition of lands. To meet these objections we have made the measure applicable by its own vigour only to the territories under the administration of the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but have empowered the remaining Local Governments to extend it to the whole or any part of the territories administered by them if they think fit.

3. An apprehension has been expressed in some of the opinions received that the Bill might by implication affect the rights which the Crown has to all minerals throughout a very large portion of this country. Such an apprehension is, we believe, unfounded, but by way of greater precaution and to prevent misapprehension we have inserted a section (2) saving the rights of the Crown.

4. Section 2 of the Bill as introduced required the Government to determine, before it issued its declaration under section 6 of the Land Acquisition Act, whether the land should be acquired simply under that Act, that is to say, including the minerals, or whether the special provisions of this Bill should be put in force with a view to excluding the minerals from the acquisition.

It has been represented that it is not for the interest of any of those concerned that an irrevocable determination should necessarily be come to on so important a point at a stage of the proceedings when the circumstances of the case would in all probability be imperfectly known. The Government, it will be observed on reference to the Land Acquisition Act, has a discretion to withdraw from a proposed acquisition of land up to a considerably later stage, and it seems but reasonable that it should have a discretion to exclude the minerals from the acquisition at any time up to the same stage if it turns out that their acquisition is not essential to the undertaking, and that either the owners are

inwilling to part with them or the Government or the local authority or Company concerned is unwilling to pay their full value. We have accordingly (in section 3) empowered the Collector, who in such a matter would, of course, act under the control of the Government, to exclude the minerals from the acquisition at any time up to the stage of the proceedings at which the land vests, and it is no longer in the discretion of the Government to recede from the transaction.

5. It has been urged that the notice of thirty days to be given to the Government under section 3 of the Bill as introduced, by a mine-owner desiring to work his mines, is too short, having regard to the delays in communication in this country. We think the objection is reasonable, and we have accordingly (in section 4 of the amended Bill) extended the period to sixty days.

6. It has been held by the House of Lords in an important case (*Dixon v. The Caledonian Railway Co.*, 5 App. Cas. 820) that when a mine-owner gives notice under section 78 of the Railways Clauses Act, 1845, of his intention to work minerals, the Railway Company is not, for the purpose of giving its counter-notice to stop or control the working, limited to the thirty days for which the mine-owner's notice runs, that the period of thirty days is merely prescribed as a period until the expiration of which the mine-owner is debarred from working, and that the Company can at any time give its counter-notice, though of course if given at any time after the thirty days had expired and the workings had been commenced it would have no effect except as regards the further progress of the workings. The opposite view, as was pointed out by their Lordships, would involve somewhat serious consequences, and it is obviously necessary that there should be no mistake as to the effect of the Bill in this respect. It would doubtless have been sufficient, so far as regards the ultimate result, if we followed the exact wording of the English Act, on the main lines of which we are proceeding throughout. The highest Courts in this country would, as a matter of course, follow the decision of the House of Lords, but it is to be apprehended that inferior authorities might in many cases be ignorant of that decision, and might mistake the effect of the wording of the English Act, which it must be admitted is by no means clear. We have therefore thought it safer to amend the sections concerned in such a manner that they will in a clear and unmistakeable way express the effect of the English Act as construed by the House of Lords.

7. Another important English decision which points to an amendment of the Bill is that in *Smith v. Great Western Railway Co.* (2 Ch. D. 235), and in appeal before the House of Lords (3 App. Cas. 165). We may have, under a Bill of this sort, a state of things to deal with, of which that case affords an illustration, where one person holding under a terminable lease has an immediate right to work the minerals, and another person is entitled to the reversion on the expiration of the lease and perhaps to a rent

or royalty during its continuance. The lease may or may not be of such a length as to admit of all the minerals being worked out during its continuance, and it may or may not be liable to be put an end to by forfeiture or otherwise before the expiration of its term. The provisions of the English Act, which deal specially with the subject now before us, and which have been incorporated in this Bill, were found inadequate to provide for the exigencies of such a state of things as that referred to. They probably contemplate a settlement only with the person immediately entitled to work the mines, and, in order to provide for the case of a reversioner or other person interested, it was found necessary to call in the aid of a general provision of the law which would be out of place in a Bill like this.

It appears to us that the simplest mode of dealing with the various interests that may co-exist in the mines is to require, in accordance with the scheme of the Land Acquisition Act that they should all, whether present or future, be considered and compensated for simultaneously, whenever the owner of the surface has occasion to exercise his power of stopping or controlling the working.

We have accordingly provided in effect that where the person immediately entitled to work the mines intimates to the owner of the surface his intention to work them, and the latter after that determines to stop or control the working, the settlement of compensation must extend to all persons interested in the mines, and the stoppage or control will be binding in perpetuity on all alike.

8. We have introduced three new sections (8, 9 and 10), corresponding to sections 80, 81 and 82 of the Railways Clauses Act, 1845. We question whether the object of these sections would not have been otherwise attained through the medium of the Land Acquisition Act, the provisions of which were made applicable by section 6 of the Bill as introduced; but as importance appeared to be attached to them in the memorial of the Coal Companies, we have thought it better to remove all doubt by including them. They will doubtless overlap section 6 of the Bill, but no practical harm will result from this.

9. An objection has been taken in some quarters to section 11 of the Bill as introduced (now section 14), which in effect gives to certain Companies the powers conferred on the Local Government by some of the foregoing provisions of the Bill. It appears to be overlooked that the section in question can apply only to Companies established for such purposes and occupy such a position from a public point of view as would warrant the Government in acquiring land on their behalf. In particular it is provided, by (sections 48 and 49 of) the Land Acquisition Act, that land shall not be acquired for a Company under that Act unless it is needed for a work likely to prove useful to the public, and the Company enters into an agreement with the Government settling, among other matters, the time within which and the conditions

on which the work shall be executed and maintained and the terms on which the public shall be entitled to use it.

10. We may further observe that there appears from some of the papers considered by us to be a certain amount of misapprehension as to the nature of the powers referred to.

If the Local Government or the Company exercising the powers of the Local Government neglects to come to terms with the mine-owner on his giving notice of his intention to work, it does so at the risk of its property. If, considering that the mine-owner is working improperly, it takes steps under section 7 (new numbering) to remedy the mischief with a view to charging the mine-owner with the cost, it does so at the risk of losing its money and of incurring serious legal consequences if the Court before which the case may ultimately come takes a different view of the matter. Similarly, if it considers that the mines are being worked contrary to the provisions of the Act and proceeds to take steps under section 13 (new numbering), it still acts at its own risk, for it is by no means certain that it will appear to the Court that the mines were being so worked.

Thus the powers in question are very far from being so formidable as has been supposed, and we may add that they are framed as closely as possible on the lines of those conferred by Parliament on Railway Companies in England, the substance of which seems generally to have met with approval.

11. We have placed "local authorities" on a footing similar to that of Companies, as in many recent Acts the provisions of the Land Acquisition Act have been made applicable for the purpose of acquiring land for such authorities.

12. We are informed that there are certain land acquisition cases pending at this moment in Bengal, which have already proceeded beyond the stage at which the provisions of this measure would in its ordinary course be applicable to them, but in which it may nevertheless be thought desirable to have the benefit of it. To meet this, we have inserted a clause (15 (2)), which will admit of the Bill being applied in such cases if those concerned unanimously desire that it should.

13. The publication ordered by the Council has been made.

14. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended."

23rd September, 1885.

APPENDIX E.

RULES ISSUED BY THE GOVERNMENT OF BENGAL UNDER SECTION 55 OF ACT I OF 1894, HAVING THE FORCE OF LAW.

Notification No. 29T.—R., the 24th April, 1895.—In exercise of the powers conferred by section 55 of the Land Acquisition Act, I of 1894, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to make the following rules in supersession of the rules issued under section 59 of Act X of 1870.

RULES UNDER THE LAND ACQUISITION ACT, I OF 1894.

1. WHEN any revenue-paying land is acquired under the Land Acquisition Act, 1894 (I of 1894), the proprietor shall, except as provided in rule 6, be relieved of the liability to pay revenue to the extent of the Government demand upon the said land; and such relief shall have effect in the manner hereinafter described:—

(a) in estates in which the instalments of revenue as laid down in the settlement-papers are known, it shall take effect from the end of the month immediately preceding that in which possession of the land is taken; and

(b) in estates in which the instalments of revenue are not known, it shall take effect from the 'latest day of payment' of revenue (as determined by the Board of Revenue, Lower Provinces, under section 3 of Act XI of 1859) immediately preceding the date on which possession is taken.

2. In such cases the Collector shall, before making an award, ascertain, in accordance with the two next following rules, and record the amount of Government revenue which is to be taken as payable in respect of the acquired portion, and shall, in the event of a reference being made to a Court, furnish the Court, at the time of making the reference, with particulars of the amount of the share so ascertained and recorded

3. If the land to be acquired be an entire estate or tenure assessed with a specific amount of revenue, the whole, of such amount shall be remitted.

4. If the land be not liable for a specific amount of revenue, but be a portion of an estate or tenure which is liable for a specific amount, the proportion of Government revenue to be deemed payable in respect of the land taken shall be ascertained under the following rules :—

1st.—When an estate has, within 20 years next preceding the date of the commencement of proceedings for the acquisition of any land situate therein, been subjected to a detailed settlement, or has formed portion of an estate brought under partition under the Estates Partition Act, VIII (B. C.) of 1876, made after inquiry into and record of, the assets of the estate, the Government revenue to be deemed payable in respect of the said land shall bear to the assets of the said land the same proportion as the Government revenue of the whole estate bears to the assets of the whole estate, as shown in the settlement or partition-proceedings.

2nd.—When there has been no such settlement or partition as aforesaid, then, if the area of the estate is known with accuracy, the amount of Government revenue to be deemed payable in respect of the portion of the land taken shall bear to the Government revenue of the whole estate the same proportion as the area of the said portion bears to the area of the whole estate.

3rd.—When the Government revenue deemed payable in respect of the land taken cannot be determined by either of the above rules, one-fourth of the net rent (*i.e.*, the gross rental less a deduction of 10 per cent. for the expenses of collection) of the said land shall be taken to be the amount of Government revenue thereon chargeable.

NOTE.—The proportion of Government revenue to be deemed payable in respect of the land taken up should be calculated to pies, *all* fractions of a pie being dropped.—*Vide* Board's Revenue Circular No. 20 of February 1905.

5. In determining the amount of compensation to be awarded, the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

6. In the event of the proprietor declining to accept an abatement of revenue, such circumstance shall not entitle him to any compensation over and above the amount fixed for the award under section 23 of the Act on the original basis of calculation. In cases, however, in which the area of the portion of land acquired does not exceed one-twentieth part of the area of the estate,

it shall be competent to the Revenue authorities, if the proprietor of the estate so desire, to pay to the proprietor the computed value of the revenue deemed payable in respect of such portion on the condition of his continuing to pay the revenue of the entire estate without abatement : provided that, in computing the value of the revenue so assigned, the basis of the calculation shall not exceed the number of years' purchase (if known) upon which the market-value of the proprietor's profits, *i.e.*, the amount of compensation to be awarded for the land, has been determined. Thus, if the market-value of the said profits has been computed at twelve years' purchase, the capitalized value of the revenue deemed payable in respect of the portion of land acquired shall be calculated at not more than twelve years' purchase of the amount of revenue in question.

NOTE 1. — It has not been thought necessary in these cases to take from the proprietor a formal agreement to continue the payment of the Government revenue, without abatement, on the entire estate. It has been usual, however, in some districts to require written applications for payments of the capitalized value in which an undertaking is given to pay the revenue without abatement. The Board approve this practice and direct that such applications be filed with the Land Acquisition record as A papers (*vide* Board's Land Acquisition File 209 of 1910).

NOTE 2. — The Board have ruled that capitalized value of Government revenue should not be given to a proprietor of a temporarily-settled estate when lands are acquired from such an estate (Board's Land Acquisition File 163 of 1910).

7. When there is any question whether the land to be acquired is part of a revenue-paying estate, or is revenue-free, the Collector shall decide the matter before making his award, leaving it to the claimants to apply for a reference to the Court if they object to his decision. In case of a reference being applied for, the Collector shall, if he has decided that the land is revenue-free, determine the amount of revenue which would be payable for it in the event of its being held to belong to the revenue-paying estate of which it is alleged to form a part.

8. To enable him to calculate accurately the additional compensation to be given under section 23(2) of the Act and to keep up fully and clearly his registers of all lands occupied and compensation paid for them, the Collector shall invariably record separately his finding under the first head of section 23(1) of the Act, which concerns the market-value of the land.

9. The procedure laid down as to the payment of the compensation-money in cases of references under section 18 shall apply also to references under section 30 or section 35. The compensation-money or, if any of the parties are willing to accept payment of their shares and payment to them is admissible, the portion of it which is in dispute and cannot be paid away shall be deposited in Court when the reference is made.

10. In giving notice of the award under section 12(2), and tendering payment under section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, the officer shall, after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative, whether before or after deposit of the amount awarded, such representative must show legal authority for receiving the compensation on behalf of his principal.

E.

NAME OF WORK FOR WHICH LAND HAS BEEN ACQUIRED.
To the Officer in charge of Treasury.

Please receive for transfer to credit of Revenue Deposits the sum of Rs. — on account of compensation for land taken up for the above purpose, payable as detailed below :—

Serial No. in ward statement No.	Names of persons to whom due.	Area of land.	Amount payable to each.	REMARKS.
		Acres.	Rs. A. P.	
Total ..				

Date 19 . Land Acquisition Officer.

Received the above amount and credited to Revenue Deposits.

Treasury Officer.

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

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NAME OF WORK FOR WHICH LAND HAS BEEN ACQUIRED.
To the Officer in charge of Treasury.

Please receive for transfer to credit of Revenue Deposits the sum of Rs. — on account of compensation for land taken up for the above purpose, payable as detailed below :—

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Treasury Officer.

NOTE.—This form should be used when the amounts of compensation due are sent to Treasury in the absence of proprietors who have failed to present themselves for payment.

APPENDIX F.

FORMS OF NOTIFICATIONS, NOTICES, PROCEEDINGS, AND OTHER RECORDS PRESCRIBED BY THE BOARD OF REVENUE [BENGAL].

- | | |
|-----|---|
| No. | I.—Notification under section 4, Act I of 1894 |
| " | II.—Declaration under section 6, Act I of 1894. |
| " | III.—Declaration under section 6, Act I of 1894 and section 3, clause (1), Act XVIII of 1885 |
| " | V.—General notice to be published under clauses (1) and (2), section 9, Act I of 1894, for land to be taken up. |
| " | VI.—Special notice to be issued under clauses (3) and (4), section 9, Act I of 1894, for land to be taken up. |
| " | VII.—Requisition under section 10, Act I of 1894, to be added, when necessary to notice in appendix VI. |
| " | XI.—Proceedings under section 11 of Act I of 1894. |
| " | XIII.—Notice under section 12 (2) of Act I of 1894. |
| " | XIV.—Reference to the Civil Court under section 18 of Act I of 1894. |
| " | XV.—Reference to the Civil Court under section 30 of Act I of 1894. |
| " | XVII.—Notice of deposit of compensation under rule 10 of Government rules. |
| " | XVIII.—Certificate of possession of land made over to the parties on whose behalf it has been acquired. |
| " | XXIII.—Advertisement of sale of relinquished lands. |
| " | XXIV.—Statement of lots sold and of sale-proceeds. |
| " | XXV.—Certificate of sale of relinquished lands. |

No. I.

Form of Notification under section 4, Act I of 1894.

WHEREAS it appears to the [Lieutenant] Governor of [Bengal] that and is likely to be required to be taken by Government at the public expense for a public purpose, viz., for _____, in the village of _____, pargana _____, zilla _____, it is hereby notified that for the above purpose a piece of land measuring, more or less, _____ bighas _____ cottahs _____ chitaks of standard measurement, bounded on the [here specify the boundaries], is likely to be required within the aforesaid village of _____.

This notification is made, under the provisions of section 4 of Act I of 1894, to all whom it may concern.

Dated

191 .

Collector.

NOTE 1.—All names of places in a draft notification should be entered in capital letters.

NOTE 2.—When land is required to be taken by Government at the expense of a Company, for a work of public utility, the words, "at the expense of the (name of the Company)" should be substituted for the words "at the public expense," and instead of the words, "a public purpose," the work should be concisely described.

NO. II.

Form of Declaration under section 6, Act I of 1894.

WHEREAS it appears to the [Lieutenant] Governor of [Bengal] that land is required to be taken by Government at the public expense for a public purpose, viz., for _____, in the village of _____, pargana _____, zilla _____, it is hereby declared that for the above purpose a piece of land measuring, more or less, _____ bighas _____ cottahs _____ chitaks of standard measurement, bounded on the [here specify the boundaries], is required within the aforesaid village of _____

This declaration is made, under the provisions of section 6 of Act I of 1894, to all whom it may concern.

A plan of the land may be inspected in the office of the

Dated _____

191 .

Collector.

NOTE 1.—All names of places in a draft declaration should be entered in capital letters.

NOTE 2.—When land is required to be taken by Government at the expense of a Company, for a work of public utility, the words, "at the expense of the (name of the Company)," should be substituted for the words, "at the public expense," and instead of the words "a public purpose," the work should be concisely described.

NO. III.

Form of Declaration under section 6, Act I of 1894, and section 3, clause (1), Act XVIII of 1894.

WHEREAS it appears to the [Lieutenant] Governor of [Bengal] that land is required to be taken by Government at the public expense for a public purpose, viz., for _____, in the village of _____, pargana _____, zilla _____, it is hereby declared that for the above purpose a piece of land measuring, more or less, _____ bighas _____ cottahs _____ chitaks of standard measurement, bounded on the [here specify the boundaries], is required within the aforesaid village of _____

Mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines and minerals as it may be necessary to dig or carry away, or use in the construction of the work for the purpose of which the land is being acquired are not needed.

This declaration is made, under the provisions of section 6, Act I of 1894, and section 3, clause (1), Act XVIII of 1885, to all whom it may concern.

A plan of the land may be inspected in the office of the

Dated _____

.91 .

Collector.

NOTE 1.—All names of places in a draft declaration should be entered in capital letters.

NOTE 2.—When land is required to be taken by Government at the expense of a Company for a work of public utility, the words "at the expense of the (name of the Company)," should be substituted for the words "at the public expense," and instead of the words "a public purpose," the work should be concisely described.

uch interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the settlement.

Dated

191 .

Collector.

No. XI.

Land Acquisition.

Case No. of 191 .

Proceedings under section 11, Act I of 1894.

Name of project.

Number and date of the declaration under which the land is to be acquired.

Situation and extent of the land in bighas and acres, the number of field plots on the survey map, the village in which situated with the number of mile plan, if any.

Description of the land, *i.e.*, whether fallow, cultivated, homestead, etc. If cultivated, how cultivated.

Names of persons interested in the land and the nature of their respective interests.

Amount allowed for the land itself, without the trees, buildings, etc., if any.

Amount allowed out of such sum as compensation for the tenants' interest in the land.

Basis of calculation.

Amount allowed for trees, houses or any other immovable things.

Amount allowed for crops or huts.

Additional compensation on the market-value under section 23 (2).

Damages under clauses 3, 4 and 6 and expenses incidental to change of residence under clause 5, section 23 (1), Act I of 1894.

Award under section 11, Act I of 1894, with particulars of abatement of Government revenue, or of the capitalized value paid, the date from which the abatement takes effect, and the tauzi number of the mahäl.

Apportionment of the amount of compensation.

Date on which possession was taken under section 16 or 17, Act I of 1894. If under section 17, the number and date of the orders of Government giving authority to do so.

Declaration No. , dated published at page , Part of the *Calcutta Gazette* of the

Total Rs.

Total Rs. (in words).

Names of claimants.	Amount payable to each.			REMARKS.
	Rs.	A.	P.	
Total ..				

Dated

191 .

Collector.

No. XIII.

Form of Notice under section 12 (2) of Act I of 1894.

Project

Number of case

To

NOTICE is hereby given that in the above case, in which you have been treated as a person interested, an award was made by me on the 191 under section 11 of Act I of 1894. The sum payable to you is Rs. . If you are willing to accept payment, you should appear before me personally or by a duly authorized agent on or before

. Interest will not be payable in the case of failure to appear.

Dated

191 .

Collector under Act I of 1894.

No. XIV.

Land Acquisition.

Case No.

of 191 .

Reference to the Court under section 18, Act I of 1894

WHEREAS A.B., son of , has not accepted the award made by me under section 11 of Act I of 1894, a copy of which is hereto annexed, and has required by the accompanying application that the matter be referred to the Court, I hereby make the reference to the Court of the

Name of project.	. Declaration No. , dated
Number and date of the declaration under which the land has been acquired.	, published at page
Situation and extent of the land, the number of field plots on the map, the name of the village, and the number of mile plan, if any.	Part of the Calcutta Gazette
Particulars of trees, buildings or standing crops, if any.	the
Names and addresses of the persons found to be interested in the land, and nature of each person's interest.	
Amount awarded for damages, and paid or tendered under sections 5 and 17.	For land.
Compensation awarded under section 11.	For trees, houses, etc.
Grounds on which the amount of compensation was determined.	For crops and huts.
Nature of the objection taken to the award.	Total Rs.
	Total Rs. (in words).

Dated ,

191 .

Collector.

* SCHEDULE.—Particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested.

No. XXIII.

Advertisement of sale

NOTICE is hereby given that the undermentioned plots of land, no longer required by Government situated along the _____ Railway, in the district of _____, will be put up to sale at _____ o'clock on _____, the _____ 19 _____, corresponding with the _____ Fusli at _____

The purchasers of the several plots of land will be subject to the following conditions :—

- 1st—The purchasers will have no power to make any excavations on the land nearer than fifteen feet from the railway boundary or to plough the land nearer than three feet from the same.
- 2nd—If the amount of purchase-money does not exceed Rs. 100, the whole amount must be paid down at once
- 3rd—If the amount of purchase-money exceeds Rs. 100, one-fourth of the amount must be immediately deposited. If the balance be not paid by noon of the fifteenth day after the sale reckoning the day of sale as one, or if that day be a close holiday, then by noon of the first succeeding office day, the sale shall be cancelled, the sum deposited being forfeited to Government and the lot again put up for sale at the risk of the defaulting purchaser, after issue of advertisement, as in the case of original sale.
- 4th—The plots of land will be sold revenue-free to the highest bidders.
- 5th—The purchasers shall be put in possession on receipt by the Collector of the orders of the Commissioner confirming the sales.

Consecutive lot number.	Name of district.	Pargana and mauza.	Number of mile on which land is situate.	Situated on which side of the railway.	APPROXIMATE AREA OF LOT IN BIGAHS AND IN ACRES.	
					B. K.C.	Acre and decimals.
1	2	3	4	5	6	

LAND EXCLUDED FROM SALE FROM EACH LOT.		Commencement and termination of lot.	Boundary of lot.
Reasons for exclusion.	Acres and decimals.		
7		8	9

The

191

Collector.

No. XXIV.

*Statement of the lots sold and of the sale-proceeds, of class lands
on the Railway, in the district of during the quarter
ending 191 .*

No. of mile.	Name of mauza.	No. of lot.	Area of lot in acres and decimals.	On which side of the railway line the lot is situ- ated	Prices according to average acreage rate at which acquired.	Date of sale.	Price at which sold.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs.	A. P.

INSTRUCTION.—When all the lands relinquished by a Railway have been disposed of a note should be made by the Collector in the column of "Remarks" of the last statement that no more lands remain to be sold.

Dated

191 .

Collector.

No. XXV.

No.

Certificate of sale.

I, _____, Collector of _____, do hereby certify that the right of Government to the undermentioned lot of class _____ land of the _____ Railway situated in the district of _____, as shown in plan No. _____, has been purchased by _____ inhabitant of mauza _____, pargana _____, district _____, for Rs. _____ at the public sale held on the _____ under the orders of the Board of Revenue, No. _____, date _____ 191 .

The purchaser will hold in possession, revenue-free, the land above referred to, as per extract from plan furnished along with this certificate—

Plan No.	Lot No.	Approximate area in acres and decimals.

The

191 .

Collector.

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